

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CELESTE J. MATTINA, Regional Director, Region 2,
National Labor Relations Board, for and on behalf of the
NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

KINGSBRIDGE HEIGHTS REHABILITATION
AND CARE CENTER,

Respondent.

**DECLARATION OF HELEN
SIEGER**

**Civil Action No:
08-CV-6550 (DLC)
ECF CASE**

I, HELEN SIEGER, hereby declare, under penalty of perjury, pursuant to 28 U.S.C.
§1746:

1. I am the Owner and Facility Operator for Respondent Kingsbridge Heights Rehabilitation and Care Center ("Kingsbridge"). I am familiar with the facts and circumstances surrounding this action and submit this Declaration in Opposition to the Petition for Temporary Injunction Under Section 10 (j) of the National Labor Relations Act.
2. Kingsbridge is a 400 bed nursing home located at 3400-26 Cannon Place, Bronx, New York. Some of our employees have been represented by United Health Care Workers East, 1199 SEIU ("Union") at least since the time I came to the facility in 1995. The most recent collective bargaining agreement with the Union expired in April 2005. We have negotiated in good faith with the Union regarding the terms and conditions for a successor agreement. As of October 2006, we had come to agreement on all terms with one exception: The Union refused to agree to Kingsbridge's proposal to utilize the services of the American Arbitration Association and have an arbitrator randomly assigned for each arbitration. Rather, the Union wanted a single person to be designated as the arbitrator on all cases. Kingsbridge was unwilling to agree to this

and maintained that the more equitable approach was for arbitrators to be randomly selected on a case by case basis. I personally, and my legal counsel at the time, Joel Cohen of the firm McDermott, Will & Emery, wrote the Union and/or its counsel numerous letters conveying this. Copies of said correspondence are attached as Exhibit 4. See also Petitioner's Exhibits XX and ZZ.

3. During this same time, the high cost of 1199 fund contributions combined with lower reimbursement rates and large recoupments of monies created a strain for Kingsbridge and, to my understanding, in the industry as a whole. We (and upon information and belief, many other facilities) got behind in some of our benefit fund contributions. Instead of agreeing to work out a payment plan with us, as Kingsbridge had requested many times, the Union filed NLRB charges on the issue, and more significantly threatened to, and ultimately did, terminate the employees' medical benefits. It is undisputed that the Union has admitted through their agent and representative Jay Sackman, that even though other 1199 facilities have been delinquent in their benefit fund contributions, the Union has not cut off those employees' health care benefits, because they had a contract. Attached as Exhibit 5 is a copy of the Greater Funds Delinquency Report dated February 2, 2004 that Mr. Sackman gave me several years ago. While this document contains various entries for "first step termination" letters being sent, there is no indication that any other facility actually had their benefits terminated. Upon information and belief, this disparity in treatment continues and Union and the Funds continue to single out Kingsbridge in the manner in which it seeks to address delinquent payments.

4. The issue of our delinquent payments first went to hearing before the NLRB in May and June of 2006. In the midst of the hearing, the Union and Kingsbridge reached a settlement agreement. I note that at no time during the prior proceedings, which involved nearly

identical issues regarding our contributions to the benefit fund and the employees' benefits, did the NLRB seek injunctive relief.

5. In or about August 2007, the Union claimed that we had violated the terms of the settlement agreement and sought to reopen the original hearing. Also, at or about this same time, and continuing to date, the Union started utilizing our existing obligation to make benefit fund contributions as leverage in attempting to obtain a collective bargaining agreement on the Union's terms. It is my understanding that such tactics are not lawfully permitted under the NLRA.

6. Further evidence of the Union's ill will towards Kingsbridge was conveyed to me during a meeting I had with the Union's Executive Vice President, Mike Rifkin, in or about November 2007 at a kosher deli in Riverdale. Mr. Rifkin began the meeting by telling me he was "not here to negotiate." He told me it was his plan to shut Kingsbridge down, and put me out of business "as an example to the industry."

7. In August 2007 we had asked the Union to negotiate a change as to how we would make payments to the benefit funds in the future. When the Union refused to negotiate, my attorney, Mr. Cohen, filed a charge with NLRB on or about December 4, 2007. A copy of his correspondence to the NLRB, the referenced charge and supporting documents are attached as Exhibit 6. We were initially told that the Regional Director had dismissed the charge. Later, the NLRB claimed that Kingsbridge had "withdrawn" the charge. Attached as Exhibit 7 is a copy of Mr. Cohen's January 31, 2008 correspondence to the Regional Director in response to the apparent "withdrawal." I note that to date, I have never seen any documentation indicating that Kingsbridge in fact withdrew the charge. In any event, the NLRB refused to further process it.

8. Attorney David Jasinski filed a charge on behalf of Kingsbridge against the Union on or about March 26, 2008, a copy of which is attached as Exhibit 8. I subsequently agreed to withdraw the charge based on the representation of the NLRB that it was without prejudice to my right to re-file it, which I did on August 5, 2008, as indicated by the attached Exhibit 9.

9. The strike propaganda being distributed by the Union, including that which is attached as Exhibit 10 is filled with blatant lies. First, these documents claim that there has not been a contract since 2000. This is false and the Union knows it. It is undisputed that the contract expired in April 2005. Second, Kingsbridge did not refuse to negotiate. We remained ready and willing to enter into an agreement so long as the arbitration procedure was fair and acceptable. It is the Union who refused to negotiate and who would only sign a contract if we made up the delinquent payments to the Fund .

10. Union propaganda also claims that Kingsbridge “cut off” the medical benefits. Nothing can be further from the truth. Kingsbridge continued to remit payments to the funds up to and including our last payment on November 10, 2007, as indicated by the documentation attached as Exhibit 11. It was subsequent to this payment that we learned that the employees’ health benefits had been discontinued.

11. I also have offered many other options to provide health insurance coverage on an interim basis so that employees would not be without coverage. In March 2008, we submitted a proposal whereby Kingsbridge would procure its own medical benefits in order to avoid the Union’s arbitrary discontinuance of benefits. See Petition Exh. AAA, Jasinski letter of March 14, 2008 and my correspondence of May 6, 2008 attached as Exhibit 12.

12. As a facility serving the needs of the frail and elderly, we are committed to making sure our residents feel safe and protected in their vulnerable state of health. Our only entrance is located on Cannon Place, a very narrow street in a residential area, which provides limited space for individuals to enter and exit the building. The front sidewalk is also very narrow and is only about four or five feet wide.

13. We have, for many years, maintained and used permanent exterior and interior surveillance cameras to monitor the premises as a basic security measure. State and federal health care regulatory agencies may also seek video surveillance for compliance purposes from time to time. Petitioner alleges that we have unlawfully utilized video surveillance and suggests that this conduct was done in intentional defiance of an NLRB Order. I note that we have openly videotaped for security purposes for at least a decade without protest from the Union. Moreover, to my knowledge, the NLRB will often ask employers to submit videos of union activity when questioning the lawfulness of certain picketing activity. The necessary and legitimate reasons for our video surveillance are detailed more fully below and in the accompanying affidavits. It should be noted, however, that the dates of alleged unlawful surveillance in the Petition, with one exception, all pre-date the NLRB decision adopting the ALJ decision on January 31, 2008, which was not enforced by the Second Circuit until very recently (July 11, 2008). As set forth in the brief that was submitted on our behalf to the NLRB by our prior legal counsel excepting to the ALJ's recommended findings, a copy of which is attached as Exhibit 13, we, at all times, maintained a legitimate and justifiable reason for engaging in surveillance based on the prior acts of this Union. That the NLRB ultimately ruled against us in this regard is not a reasonable basis upon which to conclude that our continued use of video surveillance pending the determination should be viewed as willful disregard for the law.

14. The history of violent and unpredictable conduct by this Union against our facility, as well as our understanding of its conduct during other strikes, requires us, as a health care facility charged with care of the elderly, to be vigilant in insuring the safety of our residents. On a prior occasion this Union came to Kingsbridge unlawfully, in the middle of the night, with cameramen and reporters from The New York Daily News. Our residents were traumatized and many required therapy and counseling because they thought they were being robbed or would be killed. For some, therapy continues to this day. In 2006, certain Union members made violent threats to intimidate non-striking employees and were terminated for this offense. On another occasion, Union delegates stormed the office of the Administrator and threw things off his desk. Moreover, since the picketing and strike began, there have been numerous instances which have threatened my own safety, as well as the safety my staff and residents. For example, on multiple instances while attempting to come to or leave work, I have had my car surrounded and bombarded with flying objects. Strikers also kicked and punched my car. In particular, I recall that on or about June 16, 2008, Sivasakhy Ramalingam kicked and dented the car I was in. On this occasion, the windshield was also cracked. Also on this occasion, I recall that Lily Miller along with several others laid down the ground in front of the car in an effort to prevent it from moving. On or about May 23, 2008 while trying to enter the facility I was punched in the left lower back by Union Vice President Isaac Nortey. Strikers have thrown rocks at windows. Since the strike began I have had to replace the cameras multiple times because they have been destroyed by the Union. On an occasion in or about December 2007, while going to my car to leave, I encountered a striker defecating in the parking lot. Signs and posters, copies of which are attached as Exhibit 14, threaten me and my physical safety. They held a funeral process with

effigy. Knives have been pulled. I saw one employee who had a clump of hair ripped from her head.

15. Contrary to the allegations in the Petition, we have never sought to record Union meetings or other non-violent conduct. I have never directed anyone to film this type of Union activity. Upon information and belief, since some time in 2006, the Union has rented a house across the street from Kingsbridge. It my understanding that since the strike began in February of this year they have since rented a second house as well. Thus, the Union has space to utilize for conducting private meetings with its members if it is actually concerned that any such meeting might be recorded on our cameras.

16. It is ironic that the Union is objecting to surveillance and recording of events especially in light of their own actions. As indicated by the flyer attached as Exhibit 15, the Union has been photographing our current staff and then seeking to identify them by name for purposes of intimidating them. Some employees were followed to their homes and threatened. Our employees have the same right to refrain from Union activity as the striking employees have to engage in it.

17. It is my understanding that because this is an economic strike we are entitled to and did hire permanent replacement workers. It is my further understanding that we are not obligated to return to work anyone who has engaged in strike misconduct. Since it is unlikely that any employee will ever acknowledge that he or she engaged in such conduct, a recording is likely to be the only means we have available to preserve our evidence in this regard. A court order prohibiting us from utilizing our video surveillance would permit the Union to follow through with their threats and continue in their unlawful actions without fear that they will be held accountable for their actions.

18. I note also that many of the Union's claims regarding surveillance are without any basis in fact. For example, Petitioner alleges that Mr. Szereszski surveilled union members on October 18, 2007. In fact, Mr. Szereszski was not even employed by Kingsbridge as of that date. In any case, it would not appear that our use of surveillance has in any way deterred employees from participating in the strike or picketing. No affidavit submitted in support of the Petition claims this. I have repeatedly conveyed to employees their right to participate in any lawful strike activity without fear of reprisal, as evidenced by my memoranda attached as Exhibit 16.

19. Petitioner also seeks an injunction prohibiting Kingsbridge from entering into any "yellow dog" contracts with individual employees. This allegation involves a situation that occurred subsequent to a strike notification wherein certain employees expressed concern about whether they wanted to go on strike at all. It was my understanding that employees needed to resign from the Union in order not to be disciplined for failing to strike. We did not speak to any employees about working conditions until after they presented proof that they had resigned from the Union. The referenced "yellow dog" contracts were intended only to confirm in writing the benefits that we intended to pay these people. The referenced "yellow dog" contracts were intended only to confirm in writing the benefits that we intended to pay. We did not appreciate or understand at the time that a resignation from the Union did not equate to a resignation from the bargaining unit, and moreover, that the language in the document about joining a union was not permissible. Only a handful of people signed the agreements. As soon as we became aware of our mistake, we considered the statement to be null and void and on or about March 31, 2008 issued a memo to this effect, a copy of which is attached as Exhibit 17.

I now understand what a "yellow dog" contract is and why they are considered impermissible. We regret the error and will not make this mistake again.

20. The Union has also sought to jeopardize the care we provide to residents by attempting to intimidating our vendors from doing business with us. We received calls from hospital discharge planners stating that they had received the flyer attached as Exhibit 18 and they would no longer send us referrals. Letters and flyers, like the ones attached as Exhibit 19, were sent to our vendors. Our linen supply company was threatened with a strike and refused to deliver. The only way for us to get clean linens for the residents was to rent a truck and drivers three times per week to go to pick up the linens. Our bakery was similarly threatened and in order to insure fresh baked goods, we had to send our staff out to meet the bakery truck. Our food vendor refused to deliver after being threatened by the Union. While these may be acceptable Union tactics when dealing with manufacturing operations, this is a health care facility, not an assembly line. Interfering with necessary supplies has a direct correlation to patient care. To intentionally deprive residents of food or fresh linens is abusive.

21. Sometime in the Fall of 2007, I communicated with my attorney on a variety of subjects, including union dues contributions after contract expiration. Following those communications, I ceased deducting union dues and sought to refund this money to employees. I intended these payments not as gift, but a refund of the dues deductions.

22. Petitioner alleges that Kingsbridge unlawfully refused to bargain in good faith by refusing to meet with the FMCS. We had been at impasse for over a year on a single straightforward issue of the arbitration service to be utilized under the contract. We were given no reason to believe that the Union had changed its position and was willing to negotiate a resolution of this contract issue independent of the fund delinquency controversy. That being

said, I was out sick with fever prior to the strike and physically unable to participate in mediation at that time. I also advised the mediators that I was without counsel at times. I have continued my dialogue with the mediators to date.

EXECUTED ON THE 6TH DAY OF AUGUST, 2008.



HELEN SIEGER



October 31, 2006

To All Employees of Kingsbridge Heights,

This letter serves to advise that we have conceded on all issues with regard to the Union contract except for the Arbitrator. It is our position that we are entitled to choose from the American Arbitrators Association (AAA) for any arbitrator.

This is the only outstanding issue with regard to signing the contract with 1199.

Kindly demand from the Union their position in writing. Also how they can attempt to force Kingsbridge to accept their choice, Mr. Scheinman.

Sincerely,


Ms. Helen Sieger
Executive Director



Boston Brussels Chicago Düsseldorf London Los Angeles Miami Munich
New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Joel E. Cohen
Attorney at Law
jcohen@mwe.com
212.547.5566

December 11, 2007

BY HAND

Irwin Bluestein, Esq.
Meyer, Suozzi, English & Klein
1350 Broadway, Suite 501
New York, New York 10018

Re: Kingsbridge

Dear Irwin:

Please see attached.

It is absolutely clear that the Union is picketing on a Saturday because it knows that Helen Sieger is an Orthodox Jew and will be restricted by her faith from protecting the Center on her Sabbath. It is repulsive for the Union to take advantage of Ms. Sieger's religious beliefs and we will be notifying Jewish organizations and clergyman of all faiths about this behavior by 1199.

Secondly, two comments in the flyer are absolute brazen lies. First the statement that there has been no contract since 2000 is a lie. There has been no contract since April 2005. More importantly the statement that Helen Sieger has refused to negotiate is a lie. Helen Sieger has agreed since 2005 to sign the Greater New York contract except that she wants American Arbitration Association arbitrators to hear contract disputes, not the "Impartial Chairman", Martin Scheinman. That is the only issue that has kept the parties from signing a contract. Send Ms. Sieger the Greater New York contract with the American Arbitration Association as arbitrator and she will sign the contract today.

Moreover, Ms. Sieger has not taken away health benefits, the 1199 Benefit Fund has cut off benefits allegedly due to late payments. However, Kingsbridge is no later in payment than most 1199 health care institutions who have not had benefits cut off. 1199 has cut off the benefits for Kingsbridge, to provoke its employees to strike, since it knows employees won't strike over who the arbitrator should be.

Irwin Bluestein, Esq.
December 11, 2007
Page 2

Finally, we have evidence that 1199 is actively seeking to close Kingsbridge "to teach Helen Sieger a lesson" even if it means that Kingsbridge employees will lose their jobs.

Kingsbridge will not stand by and allow 1199 to close its doors to the detriment of its employees "to teach Helen Sieger a lesson". Kingsbridge will shortly commence legal action to protect itself and its employees from 1199's shameful conduct.

Very truly yours,

Joel E. Cohen

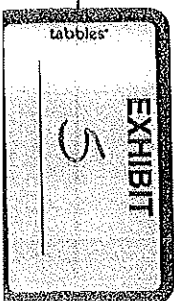
cc: Helen Sieger

Greater Funds Delinquency Report

December 2001

02/17/

File	Organization	12/01	12/02	10/03	07/03-06/03	04/03-06/03	12/02	Total	Comments
		1 Month	2 Months	3 Months	4-6 Mos.	7-12 Mos.	1 Year		
41817	Belle Harbor Manor			900				900	Delinquency letter sent
		B P E C 1							
3810	Brooklyn Queens					3,632		3,632	Delinquency letter sent
		B P E C 1							
3543	Cuba Nursing Home Company	28,000 9,200 751 800		150	25,536 143	17,081	10,300 4,150 220	38,500 55,969 971	Delinquency letter sent Period of Schizophrenia "Abeyance" award
		B P E C 1							
8958	Culston	41,800 13,700 1,200 1,200 600	41,100 13,500 1,200 1,100 600		41,907 1,026 205	28,495		82,900 97,603 4,764 2,773 1,290	Delinquency letter sent Period of Schizophrenia "Abeyance" award
		B P E C 1							
41820	Curt Nursing and Rehabilitation Center	2,450	3,850	2,930	9,260			19,190	Delinquency letter sent
		B P E C 1							
8611	Clove Lakes	207,290 68,300 5,452 5,300 2,900	63,684	77,949		71,189		207,290 281,022 5,452 5,300 2,900	Delinquency letter sent Period of Schizophrenia "Abeyance" award
		B P E C 1							
8965	Cobble Hill	180,900 52,700 4,500 4,500 2,300	128,390 53,202 3,271 4,555 1,708		162,002	121,200		289,290 389,104 7,771 9,942 4,038	Delinquency letter sent
		B P E C 1							
8726	Confidence Management-Biolytecher	3,048 1,300 100 100 100		89 18 25	150 23	46	25	3,048 1,300 457 165 100	Delinquency letter sent Replaced Healthcare Services effective 05/17/02
		B P E C 1							
41729	Crestford Health and Extended Care	37,500 1,200	36,600 1,200	32,150 1,300			1,245	106,250 4,945	Delinquency letter sent
		B P E C 1							
41875	Delridge Care Center			208			1,375	1,375	Delinquency letter sent
		B P E C 1							



"Greater" Funds Delinquency Report

December 2003

03/17/2004

ISS	Institution		12/03 1 Month	11/03 2 Month	10/03 3 Month	07/03-09/03 4-6 Mos.	03/03-06/03 7-12 Mos.	12/02 1 Year	Total	Comments
8333	Dz. William Remington	B P E C J	11,465	511	503	220	33,014	220	220	Delinquency letter sent. Education and CCC delinquencies arise from payment at wrong rate, our wrong gross wage totals.
8618	Fleming Nightingale	B P E C J	145,100	142,600	1,729	141,101	25,118	312,310	312,310	Delinquency letter sent. Period of Schickman "boyzone" award.
8280	Fleming Manor	B P E C J	25,831	318	425	511	2,850	131,642	131,642	Delinquency letter sent. Period of Schickman "boyzone" award.
8983	Forest Hills Nursing Home	B P E C J	\$00	751	896	1,979	1,241	1,440	1,440	Delinquency letter sent. Shortages arise from payment on adjusted gross wages.
8373	Forest View	B P E C J	17,035	14,084	17,064	45,171	263	93,374	93,374	Delinquency letter sent. Period of Schickman "boyzone" award.
41619	Gravelly Nursing Home	B P E C J	18,892	241	292	231	764	100,683	100,683	Delinquency letter sent.
3710	Henderson Services-Fleming Nightingale	B P E C J	6,944	4,770	13,823	6,728	33,767	Delinquency letter sent.		
8338	Hollis Park Manor	B P E C J	5,585	19,137	14,811	850	40,183	Delinquency letter sent. Period of Schickman "boyzone" award.		
8616	Horton	B P E C J	28,960	11,712	19,011	30,612	5,173	106,930	106,930	Delinquency letter sent. Period of Schickman "boyzone" award.
8646	Marcus Garvey	B P E C J	86,200	101,850	33,374	2,871	2,400	188,050	188,050	Delinquency letter sent.

Greater Funds Delinquency Report

December 2003

02/17/2004

LOC	Location	12/03 3 Months	11/03 2 Months	10/03 3 Months	07/03-09/03 4-6 Mo.	01/03-06/03 7-12 Mo.	12/02 1 Year	Total	Comments
8300	Medlow Park Nursing Home	B P E C J	30,400 10,200 900 900 400	865 865 424	19,150 23,195 2,553	7,660 6,786 1,713	13,176 213 136 455	56,610 53,353 1,978 6,591 855	Delinquency letter sent. Period of Settlement "abeyance" award.
8600	Medco Enterprises-Bridgford	B P E C J	56,500 18,500 539 596 298			53,078	36,491	56,500 108,069 539 596 298	Delinquency letter sent. Period of Settlement "abeyance" award.
8631	Medco Enterprises-Eastaven	B P E C J	700 11,700 231 1,000 500			35,112	11,412	700 58,224 231 1,871 1,013	Delinquency letter sent. Period of Settlement "abeyance" award.
8601	Medco Enterprises-Michoud Parkway	B P E C J	30,580 10,100 757 900 400		1,001 1,084 502	31,329	20,397	30,580 61,826 1,758 1,944 902	Delinquency letter sent. Period of Settlement "abeyance" award.
8639	Medco Enterprises-Hyatt	B P E C J	46,690 4,700 1,522 1,600 803			14,227	9,465	46,690 28,390 1,522 1,600 803	Delinquency letter sent. Period of Settlement "abeyance" award.
4751	Mill House	B P E C J	8,800	8,080		1,100	1,200	19,183	Delinquency letter sent.
8389	Merita Park	B P E C J	18,497	14,166	17,937		14,212	64,832	Delinquency letter sent. Period of Settlement "abeyance" award.
8303	New Glen Oaks	B P E C J	506 14,000 4,600 400 400	14,210 4,635 599 399	3,745	13,134	346 266 963	28,210 27,981 1,065 2,057	Delinquency letter sent. Period of Settlement "abeyance" award.
8320	Northern Manhattan	B P E C J		2,011		27,612	1,070 18,986	3,990 46,618 2,011	Delinquency letter sent. Period of Settlement "abeyance" award.
8315	Palmerview	B P E C J	1,500	1,279 1,305	1,592	43,923 3,445	30,142 1,607	74,065 1,279 9,449	Delinquency letter sent.

"Greater" Funds Delinquency Report

December 2003

02/17/2004

ID#	Institution	B	12/03			01/03-06/03	12/03>	Total	Comments
			1 Month	2 Months	3 Months	4th Mo.	7-12 Mo.	>1 Year	
41007	Palmaz Nursing and Rehabilitation	B P E C J	20,150 672 670 335			20,640	14,918	20,160 34,658 672 670 335	Delinquency letter sent. Period of Settlement "abeyance" award.
8621	Queens Nassau (QNC)	B P E C J	1,240 11,900 1,200 1,200	1,129 1,129 1,350 1,350		22,542 3,669 3,167	16,655 6,913 1,836	1,240 31,097 23,008 8,622	Delinquency letter sent. Period of Settlement "abeyance" award.
5628	Queens Nassau (QNY)	B P E C J	1,270 3,480 237 300		259	7,330 801	4,150 463	1,270 15,080 237 2,169	Delinquency letter sent. Period of Settlement "abeyance" award.
41769	Riverside Manor Home	B P E C J	4,600	4,800	4,800			14,200	Delinquency letter sent.
8750	Seaborn	B P E C J		1,504		230	200	14,660 2,719	Delinquency letter sent.
8751	Seaborn (RN)	B P E C J	764			26,864 2,300	17,991 1,548	15,720 13,720 44,555 6,218	Delinquency letter sent.
8332	Shepherdess Nursing and Rehabilitation	B P E C J	13,133	401 619 1,625 813	765 2,008 1,004	30,025 1,924 4,331 2,527	19,330 3,567 7,506 4,691	62,489 11,890 20,514 11,664	Delinquency letter sent. Period of Settlement "abeyance" award.
41045	Sky View Haven Nursing Home	B P E C J		1,475		37,153	14,610 18,493	14,610 53,648 1,475	Delinquency letter sent. Period of Settlement "abeyance" award.
8635	Staten Island Care Center	B P E C J	48,940 15,998	61,620 21,402		36,662	33,487	110,560 128,549	Delinquency letter sent. Period of Settlement "abeyance" award.
		B P E C J	1,486 764	1,874 937	293	309	2,209 1,448	10,603 5,272	
8815	Tenace	B P E C J	70,500 23,290 1,977 1,977 303			56,810	36,798 2,704	70,500 116,715 3,947 12,354 809	Delinquency letter sent. Period of Settlement "abeyance" award.

"Glasgow" Florida Delinquency Report

December 2003

02/17/2004

File	last/first	12/03 1 Month	11/03 2 Months	10/03 3 Months	07/01-09/03 4-6 Mos.	01/01-06/03 7-12 Mos.	12/02 >1 Year	Total	Comments
41616	Townhouse Extended Care Center	B P E C C 1	65,100 31,700 2,748 2,700	32,094	31,643	111,253	125,013	65,100 331,703 2,748 2,700	Delinquency letter sent. Period of Solicitation "objection" award.
41054	Wauquie Convalescent Center	B P E C C 1			507			507	Delinquency letter sent.
41883	Wellington Hall Care Center	B P E C C 1	18,500	17,970				36,470	Delinquency letter sent.
41859	Willow Creek Rehabilitation & Care C	B P E C C 1	17,300			4,100	6,820	28,220	Delinquency letter sent.
41795	Wondell/Lake Manor	B P E C C 1				1,000	1,594	1,000 1,594	Delinquency letter sent.
41787	Arnold Elder Nursing Home	B P E C C 1	5,760	7,760	4,380	12,310		30,210	Delinquency letter sent and arbitration demanded.
41919	Atlantic Coast Rehabilitation Center	B P E C C 1	11,700	10,090	315	469		21,790	Delinquency letter sent and arbitration demanded.
41760	Barnhart Nursing Home	B P E C C 1	2,720					2,720	Delinquency letter sent and arbitration demanded.
41606	Drash Terrace Center	B P E C C 1	40,500 13,300 1,100 1,100 600	1,058 212	1,362 252	490 38,781 228	8,940 10,125 1,909	49,910 76,015 17,548 1,792 2,509	Delinquency letter sent and arbitration demanded. Period of Solicitation "objection" award.

Delinquency Period

"Greater" Funds Delinquency Report

December 2003

02/17/2004

CD	Investment		12/03	1/04	10/03	07/03-08/03	01/04-08/03	12/01-2			
			1 Month	2 Months	3 Months	4-6 Mos.	7-12 Mos.	13-24			
41607	Berkel Nursing Home (BC)	B P E C J	18,400 6,000 500 500 311			113 16,069 108	490 12,261		19,090 34,230 396 827 311	Delinquency letter sent and arbitration demanded. Period of Settlement "abeyance" award.	
8601	Blythecker Home	B P E C J				29,561 1,572		18,674 370		Delinquency letter sent and arbitration demanded. Period of Settlement "abeyance" award.	
41018	Carlton House	B P E C J	18,580	19,380	23,940	113,480 69,624 7,217	117,128 3,919	70,579	292,480 139,774 16,559	Delinquency letter sent and arbitration demanded. Shortages due to paying W/F at 12% instead of 16%. Period of Settlement "abeyance" award.	
41504	Cedar Lodge Nursing Home	B P E C J	17,400 5,877 500 500 300	3,970 496 500	4,960 620	1,3318 1,860	8,830 1,570		48,470 5,877 996 4,853 300	Delinquency letter sent and arbitration demanded. Shortages due to paying W/F at 12% instead of 16%.	
41714	Cedar Oaks Care Center	B P E C J	43,650 1,364	28,700 908	29,260	45,050		2,290	148,380 2,272	Delinquency letter sent and arbitration demanded. Shortages through ODRU due to paying W/F at 12% instead of 16%.	
8775	Confidence Management-Cobble Hill	B P E C J	6,800 2,200 200 202 101	2,397 205 41	2,069 67 35	6,406 315 38	2,132		6,800 15,256 785 316 101	Delinquency letter sent and arbitration demanded.	
8939	Crown Nursing Home	B P E C J	61,700 11,900 1,900 864	55,820 3,933 342	21,580 5,172	16,730 36,408 1,772 806	12,733	16,334	155,920 86,500 3,172 3,048 864	Delinquency letter sent and arbitration demanded. Period of Settlement "abeyance" award.	
61796	Dalview Nursing Home	B P E C J	10,889	8,810	10,600	85,560 41,013 1,396 3,511 698	20,930 2,617	42,773 1,001	136,780 83,786 3,498 9,654 698	Delinquency letter sent and arbitration demanded. Shortages due to paying W/F at 12% instead of 16%. Period of Settlement "abeyance" award.	
41860	Emerson Health Care Center	B P E C J	12,560	12,204	-11,700		2,010		40,410	Delinquency letter sent and arbitration demanded.	
3976	Fairview	B P E C J	48,780 15,965 2,369 1,095	11,699	13,400 1,309	1,039		1,907	48,780 41,085 2,678 5,410	Delinquency letter sent and arbitration demanded.	

"Greater" Funds Delinquency Report

December 2005

02/17/2004

ID#	Institution		12/05				01/06				02/06				Comments
			1 Month	2 Months	3 Months	4-6 Mos.	7-12 Mos.	> 1 Year	12/05	01/06	02/06				
5979	Fieldston Lodge	B P E C J	47,050 15,412 1,319 660	48,550		109,120 51,015		43,450 20,219 1,318 1,616 292	254,370 58,766 4,037 2,915 952				Delinquency letter sent and arbitration demanded. Shoregas from error in gross wage calculation. Period of Subchapter "b" payment award.		
41818	Healthcare Services-Burlington	B P E C J	81	62	63	200	339	283	1,028				Delinquency letter sent and arbitration demanded.		
41062	JFK Harbort-Admission Entrance	B P E C J		1,037		4,158		1,370 3,497	5,520 4,534				Delinquency letter sent and arbitration demanded.		
41012	King Manor Care Center	B P E C J	7,500 67	5,680 135	1,980 247	5,410		1,190 176	21,770 623				Delinquency letter sent and arbitration demanded.		
41749	Leisure Clubhouse	B P E C J	7,580	10,340	580	6,870	151		25,450				Delinquency letter sent and arbitration demanded.		
41747	Liberty House Nursing Home	B P E C J	27,900	5,860	8,660	18,310		7,980	68,910				Delinquency letter sent and arbitration demanded.		
8606	Little Neck	B P E C J	39,109 12,800 1,100 1,100	35,560 997	210 2,786	220 28,566 1,079	5,140 22,974		80,210 67,126 3,126 1,100				Delinquency letter sent and arbitration demanded. Period of Subchapter "b" payment award.		
41017	Long Beach Brighton	B P E C J	1,100						1,100				Delinquency letter sent and arbitration demanded.		
41615	Norfolk Extended Care Center	B P E C J	74,100 36,600 2,641 3,125	30,842	46,081	93,484	150 142,867		74,250 35,127 2,641 3,125				Delinquency letter sent and arbitration demanded. Period of Subchapter "b" payment award.		
3647	New York Congregational Church	B P E C J	62,700 22,400 1,900 1,000	53,030 20,731 1,777 834	14,120 3,051 432	38,730 14,207 2,674	74,590 26,710 2,287	36,740 13,138 3,151 689	285,010 107,257 14,231 4,237 1,488				Delinquency letter sent and arbitration demanded. Shoregas from error in gross wages Clien contract provides wages higher than standard: based by AVNH wage structure. Shoregas based on payroll of AVNH provided.		

"Greater" Funds Delinquency Report

December 2008

02/17/2004

DOB	Method	12/01 1 Month	11/01 2 Months	10/01 3 Months	09/01-08/01 4-6 Months	07/01-06/01 7-9 Months	05/01-04/01 10-12 Months	Total	Comments
41504	Newark Extended Care Facility	B P E C	61,500	13,970	18,200	44,240		138,310	Delinquency letter sent and arbitration demanded.
41608	Wyck-Meador Nursing Home	B P E C	16,580	10,700	10,810	39,270	20,510	97,910	Delinquency letter sent and arbitration demanded. Shortages due to paying W/P at 12% instead of 10%.
3309	Oxford	B P E C	43,400	43,060	52,480	47,748	13,454	140,860	Delinquency letter sent and arbitration demanded.
41050	Park Avenue Extended Care Center	B P E C	46,810	22,334	21,007	80,797	144,035	360,140	Delinquency letter sent and arbitration demanded.
41610	Park Turner Nursing Home	B P E C	47,200	43,900	57,390	45,108	28,998	143,490	Delinquency letter sent and arbitration demanded.
8780	Park Turner	B P E C	9,113	8,877	11,075	29,052	8,901	67,481	Shortages arise from payments on scheduled gross wages
3327	Regency Care Center	B P E C	65,260	21,374	1,830	62,060	34,033	120,168	Delinquency letter sent and arbitration demanded.
41611	Regency Extended Care Center	B P E C	62,550	16,218	25,264	54,549	15,273	145,922	Delinquency letter sent and arbitration demanded.
41612	Regency Park Nursing Home	B P E C	19,500	1,890				14,918	Period of Subsequent "abeyance" award.
		B P E C	1,900					5,934	
		B P E C	900					1,900	
		B P E C	12,250	13,360	9,150	26,300	6,770	67,730	Delinquency letter sent and arbitration demanded.
		B P E C				326		326	
		B P E C	49,000	330	360	600	2,070	74,590	Delinquency letter sent and arbitration demanded.
		B P E C	16,100	14,765	18,434		12,644	80,643	Period of Subsequent "abeyance" award.
		B P E C		1,264	253	257	3,784	4,548	
		B P E C			316		1,089	1,915	

"Gardner" Funds Delinquency Report

December 2003

02/17/2004

SS	Facility		12/03 5 Month	11/03 2 Months	10/03 3 Months	07/03-09/03 4-6 Mos	01/03-06/03 7-12 Mos	12/02 Yr Year	Total	Comments
3326	River Manor	B P E C C	76,410 22,769 2,135 2,144	2,807	315	83,073	50,530	9,979	76,430 166,351 2,135 5,316	Delinquency letter sent and arbitration demanded. Period of Schieffman "obeyance" award.
41782	Reverend Nursing Home	B P E C C	16,600 1,600 810	14,540 1,818	11,700 16,504 1,462	109,339 32,496 4,155	24,270 3,014	55,065	167,440 104,095 12,109 310	Delinquency letter sent and arbitration demanded. Shortages due to paying W/F at 12% instead of 16%. Period of Schieffman "obeyance" award.
41063	Rockville Nursing Center, Inc.	B P E C C	1,800 2,011 2,011	16,080 2,011	13,470 1,564	41,310 60,650 5,183	19,070 3,863	40,220	101,140 109,820 2,011 14,566	Delinquency letter sent and arbitration demanded. Shortages due to paying W/F at 12% instead of 16%. Period of Schieffman "obeyance" award.
41041	Saint James Healthcare Center	B P E C C	71,800 25,200 2,200	16,850 24,604 2,106	20,820	54,210	35,860	77,495	209,340 128,699 4,106	Delinquency letter sent and arbitration demanded. Shortages due to paying W/F at 12% instead of 16%. Period of Schieffman "obeyance" award.
41046	Saint James Plaza	B P E C C	18,190 1,800 900	16,170 2,021 2,021	13,140 18,270 1,653	133,580 42,481 5,448	32,470	47,400	215,350 108,151 7,301 14,970 900	Delinquency letter sent and arbitration demanded. Shortages due to paying W/F at 12% instead of 16%. Period of Schieffman "obeyance" award.
41048	San Simoes by the Sound	B P E C C	46,470 4,621 1,419 709	9,470 1,160 580	10,670	26,490	7,270		100,270 5,781 1,419 1,289	Delinquency letter sent and arbitration demanded. Shortages due to paying W/F at 12% instead of 16%.
3334	Studs Point (BAC)	B P E C C	1,179	1,084 116	282	8,881 170	1,913	6,430 18,080 1,361 2,282	6,430 19,974 3,924 2,130	Delinquency letter sent and arbitration demanded. Period of Schieffman "obeyance" award.
3335	Studs Point (LEN)	B P E C C		302 202 202	290	3,241	1,045	530 2,453 1,385 459	530 6,546 2,632 561	Delinquency letter sent and arbitration demanded. Period of Schieffman "obeyance" award.
41047	San Harbor Manor	B P E C C	79,200 28,900 2,500 2,500 1,200	74,610 27,431 2,131 2,351 1,166	65,210 33,447 2,864 2,864 1,432	137,810 86,235 7,391 1,834 3,693	58,050	80,672	414,889 256,525 20,241 9,529 18,483	Delinquency letter sent and arbitration demanded. Shortages due to paying W/F at 12% instead of 16%. Period of Schieffman "obeyance" award.
41010	LCF Brynmore Nursing Home	B P E C C		14,250 1,781	19,700	48,500 70,809	41,090	62,759	123,540 134,568 1,916 414 207	Delinquency letter sent and arbitration demanded. Shortages due to paying W/F at 12% instead of 16%. Period of Schieffman "obeyance" award.

"Greater" Funds Delinquency Report

December 2003

03/17/2004

CR	12/03	1/03	4/03	7/03-9/03	10/03-12/03	12/03	Total	Comments
3349 University	B P E C C J	4,500 1,500 132 100			1,612 117	430	4,500 3,572 132 268	Delinquency letter sent and arbitration demanded. Shortages arise from payments on adjusted gross wages
3351 Vercano	B P E C C J	34,200 11,200 1,000 1,000	12,100 10,513 510 908		35,383 42,334		66,306 59,422 1,910 1,908	Delinquency letter sent and arbitration demanded. Period of Schickman "abeyance" award.
3362 Watervew	B P E C C J	49,530 16,200 1,398 1,400	1,251 250	331	48,393 32,961	113	49,530 59,867 2,649 2,187	Delinquency letter sent and arbitration demanded. Period of Schickman "abeyance" award.
3357 Woodcrest	B P E C C J	48,600 14,500 1,100 1,100	1,046 1,046	1,328	41,684 26,371	271 2,888	41,570 52,535 2,417 9,189	Delinquency letter sent and arbitration demanded. Period of Schickman "abeyance" award.
Average Delinquency Hearing of Arbitration 12/03	B P E C C J	37,570 11,611 1,310 1,100	1,251 250 331	48,393 32,961	113	49,530 59,867 2,649 2,187	41,570 52,535 2,417 9,189	

Hearing Scheduled

3392 Cdfid:ide	B P E C C J	20,200	1,491 294	366	59,975 297	36,610	224	116,599 1,491 957	Delinquency letter sent and arbitration demanded. Period of Schickman "abeyance" award.
3394 Fort Tyson	B P E C C J	59,600 17,600 1,600 1,500	56,708 18,600 1,600 1,500	1,380 322 1,516 4,516	38,486 849 4,134	39,461 382 2,703 606	72,190 4,646 2,013	183,570 114,479 10,493 13,566	Delinquency letter sent and arbitration demanded. Hearing of arbitration scheduled for 1D February 2004. Period of Schickman "abeyance" award.
3516 Franklin Rehabilitation and Nursing Ctr	B P E C C J	37,200 28,600 2,400 2,400	101,830 31,352 2,855 2,855	2,779 2,779	46,631 6,274	52,976 1,405	28,030 1,978	217,110 201,559 9,962 25,711	Delinquency letter sent and arbitration demanded. Shortages arise from payments on adjusted gross wages Period of Schickman "abeyance" award. Hearing of arbitration scheduled for 5 February 2004.
35001 Washington Hotel Center for Health & R	B P E C C J	20,830	20,870	30,390	101,640 18,953	95,830 75,736	73,070 14,116	341,833 178,805 2,509 1,703	Delinquency letter sent and arbitration demanded. Shortages from rate increase to 16% effective 1D/1D2. Contract rates rate to be determined by arbitrator. Period of Schickman "abeyance" award. Hearing of arbitration scheduled for 5 February 2004.
3602 New Vantage	B P E C C J	77,700 25,400 2,200 2,200	72,870 1,996 2,047	28,401 2,432	46,435 5,557	71,296	3,112	150,570 171,632 4,195 13,228	Delinquency letter sent and arbitration demanded. Period of Schickman "abeyance" award. Hearing of arbitration scheduled for 23 February 2004.

Greater! Funds Delinquency Report

December 2003

02/17/2004

CD	Institution	12/03	11/03	10/03	07/02-09/03	04/02-06/03	11/02	Total	Comments
		1 Month	3 Months	6 Months	4-6 Mos	7-12 Mos	> 1 Year		
8372	Resort	56,200 16,400 1,600 1,600	39,750 17,224 1,483 1,483	1,865 1,865	54,887 4,696 4,003	57,852 4,402 7,587	4,822 2,331	99,950 128,451 14,049 21,192 5,453	Hearing 10/14/03. No jurisdiction claimed by employee. Award to be issued. Favorable NLRB ruling. Institution appealing. Employer claims not bound by new Greater NY agreement.
41621	Rockville Residence Manor				19,390	3,122	2,331	19,390 3,454 1,844 3,960 1,847	Delinquency letter sent and arbitration held 7/28/03 and 12/16/03. Shortages due to paying W/F at 12% instead of 16%. Period of Scheidman "abeyance" award.
8335	Winthrop Nursing Home	15,400 5,000 400	20,120 8,751 339 391	38,630 796	102,330	209,750 44,130		318,500 51,177 539 391	Delinquency letter sent and arbitration demanded. Shortages arise from institution implementing self help. Hearings held 11/19/03 and 11/24/03. Award issued 12/1/03 through Dec 2002. Directed audit to be done through Dec 2003 prior to determining liability for that period.
8356	Windsor Park				350	9,147		16,510 30,018 1,571	Delinquency letter sent and arbitration demanded. Hearing held Sep 16, 2003. Pension part of liability while problem. Period of Scheidman "abeyance" award.
Averaging Amount of Delinquency		55,910 16,214 1,600 1,600	39,624 17,224 1,483 1,483	1,865 1,865	168,250 12,171 10,104 15,210	209,750 44,130 7,587 14,800	4,822 2,331 12,045	972,570 128,451 14,049 21,192 5,453 30,018 1,571	

Averaging October

8809	Evergreen Beach	42,770 20,700 448 1,784	33,800 18,793 1,609 1,609	4,790 511 134	24,790 39,072 1,530 2,848	7,170 18,010 201	41,776 42 2,551	90,590 120,711 448 1,786	Delinquency letter sent and arbitration demanded. Award issued 01/26/04 through 12/31/03. To be paid within 30 days unless payment agreement is reached. Period of Scheidman "abeyance" award.
8385	Summit Park Center	57,380 18,793 1,609 1,609	33,800 18,793 1,609 1,609	4,790 511 134	24,790 39,072 1,530 2,848	7,170 18,010 201	41,776 42 2,551	169,700 77,214 4,464 9,149	Delinquency letter sent and arbitration demanded. Award issued 01/26/04 through 12/31/03. To be paid within 30 days unless payment agreement is reached. Period of Scheidman "abeyance" award.
41617	Wedgehead Health Care Center	54,238 15,620 11,216	16,620 11,216		16,360 45,660	188,030 19,435 201	42,550 3,241	228,650 77,552 201	Delinquency letter sent and arbitration demanded. Hearings held 11/19/03 and 11/24/03. Award issued 12/01/03 through Oct 2003. To pay 1/3 1/24/03, 2/24/03 and 3/24/03. Period of Scheidman "abeyance" award.
8394	White Plains	43,800 14,300 1,200 1,200	45,700 15,000 1,300 1,300		44,284	30,849	310	89,810 104,433 2,500 2,400 1,200	Delinquency letter sent and arbitration demanded. Hearings held 12/09/03. Award issued through 10/31/03. Period of Scheidman "abeyance" award.
Averaging Amount of Delinquency		55,910 16,214 1,600 1,600	39,624 17,224 1,483 1,483	1,865 1,865	168,250 12,171 10,104 15,210	209,750 44,130 7,587 14,800	4,822 2,331 12,045	972,570 128,451 14,049 21,192 5,453 30,018 1,571	

Gratier Fundis Delinquency Report

December 2003

02/17/2004

Case	Institution	12/01 1 Month	11/02 2 Months	10/01 3 Months	Confession of Judgment Process			Total	Comments
					4th Mar	7-12 Mar	>1 Year		
8760	American Genetic Corp	35,070 3,007 922	22,320 4,481 631	22,960 4,586 630	87,810 17,545 2,484	540 8,648 2,092		168,700	Award to be issued through February 2004. Confession of judgment in process. 12-month payout for Benefit Fund. 24-month payment for Pension and Education. Period of Settlement "obeyance" award.
8615	Kaiser Harbor Care Center		189,930 62,908 5,386 5,386 2,693	265,620 73,302 6,790 3,773 2,663	643,660 208,770	794,260 293,905	21,482	1,875,310	Delinquency letter sent and arbitration demanded. Hearing held 11/18/03. Award based. COI in progress through November 2003. Period of Settlement "obeyance" award.
8639	Calum Park	44,080 14,439 1,236 618	11,435 979 490	256	1561 615	157,553 44,337 3,414 3,746 2,288	2,230	203,660	Delinquency letter sent and arbitration demanded. COI in progress. awaiting signature. Making payments Period of Settlement "obeyance" award.
8629	Lavrenco	52,680 17,200	49,070 16,073 1,376	61,000 19,981 1,711	156,730 51,998	259,890 90,073	23,660 34,035 457	504,970	Delinquency letter sent and arbitration demanded. Hearing held 11/18/03. Award issued. COI in progress through 12/31/03. Period of Settlement "obeyance" award.
8995	Elly Pond	2,600 2,500 240 193	6,890 2,287 193 193	8,440 2,764 237 237	23,040 8,199 643 548	4,080 5,900	5,790	57,840	Delinquency letter sent and arbitration demanded. Arbitration held 12/16/03. Award issued. COI in progress through 11/30/01. Period of Settlement "obeyance" award.
8997	Long Island	35,100 17,400 1,500	51,760 16,950 1,451 1,451	60,370 19,772 1,693	134,790 57,664 4,259 3,872	292,100 75,842 7,925 5,195 1,575	4,665 2,342	386,110	Delinquency letter sent and arbitration demanded. Hearing held 11/18/03. Award issued. COI in progress through 12/31/03. Period of Settlement "obeyance" award.
8371	New Bridgeview	39,200 1,100 1,100 600	36,510 1,025 1,025 512	46,690 1,309 1,309 655	114,670 34,531 3,198 2,752 1,999	11,940 18,259 1,180 56 35	180,490 27,997 1,180 56 35	408,860	Arbitration held 08/12/03. Award issued 08/19/03 through 06/30/03. Shortages arise from payments on adjusted gross wages Seeking payout and COI. Hearing held 27 January 2004. Award to be issued thru 12/07.
4103	New Mayfair Company, Inc.	35,530 1,190 1,099 601	31,388 1,043 1,043 521	41,169 1,286 1,286 643	108,290 39,226 3,384 1,692	26,530 24,474 133		244,850	Arbitration held 08/12/03. Award issued 08/19/03 through 06/30/03. Seeking 24 month payout with COI. Hearing held 27 January 2004. Award to be issued thru 12/07.
8612	New Railway	41,200 1,200 409	38,430 280 1,678	48,320 350 1,355	125,440 41,085 3,518	36,400 26,413	56,660 21,065 2,249	346,450	Arbitration held 08/12/03. Award issued 08/19/03 through 06/30/03. Shortages arise from payments on adjusted gross wages Seeking payout and COI. Hearing held 27 January 2004. Award to be issued thru 12/07.
41857	Ocean Frontside Nursing Center	39,900 12,400 869 1,000 500	24,600 11,100	33,940 14,762	66,860 32,613	176,600 6,395 6,745 6,669 3,314	1,820 18,602 1,593 795	316,920	Delinquency letter sent and arbitration demanded. COI in progress through 11/30/03. Award issued through March 2003 for Pension. Period of Settlement "obeyance" award.

Greater Funds Delinquency Report

December 2003

02/17/2004

ID#	Instruction	1-01-03	1-01-03	1-01-03	07/03-08/03	07/03-08/03	12/03-12/03	Total	Comments
8307	Oceanview	B	7,448	77,540	77,920	86,910	420	192,790	Delinquency letter sent and arbitration demanded. Hearing held 09/16/03. Award to be issued.
		P	157	3,960	22,521	48,614	11,672	97,215	COI in progress through 10/31/03.
		C	636		1,495	3,173	2,223	7,629	Period of Settlement "abeyance" award.
41024	Park View Nursing Home	B	18,970	51,640	19,360	187,840	69,730	544,620	Delinquency letter sent and arbitration demanded. Settlement due to paying W/F at 12% instead of 18%.
		P		18,850	15,590	68,562		180,512	COI in progress.
		E		1,614	1,102	3,325		7,041	Period of Settlement "abeyance" award.
		C		1,614	1,252	3,325		6,191	
		J		827	626	1,662		3,093	
41756	Palm Beach Home for Adults	B		6,100	7,530	17,668	21,840	60,550	Delinquency letter sent and arbitration demanded. NLDS charges pending. Hearing held 11/19/03. settling COI. Award issued.
		P							
		E							
		C							
		J							
Confession of Judgment through 11/30/03.									
		B	38,998	28,340	34,900	94,740		145,620	
		P	14,220	10,342	1,091	3,110	6,780	38,248	
		E	1,218	885	1,091	3,110	2,721	7,235	
		C	1,218	885	1,091	3,110	2,721	7,235	
		J	609	443	545	1,555	544	4,806	
41028	Glenfield Nursing Home	B	65,540	60,250	76,310	246,130	317,010	835,592	Confession of Judgment through November 30, 2003.
		P	22,972	21,592	4,164	89,839	88,006	231,967	Period of Settlement "abeyance" award.
		E	2,048	1,883	2,385	7,692	16,624	45,724	
		C	2,048	1,883	2,385	7,692	16,624	45,724	
		J	1,024	941	1,193	3,846	10,650	28,131	
8373	Healthcare Services-Palm Gardens	B	62,100			161,780	152,639	389,599	Confession of Judgment through 09/30/03.
		P	23,571			59,450	69,506	187,470	Period of Settlement "abeyance" award.
		E	2,036			5,170	257	8,465	
		C	2,036			5,170	257	8,465	
		J	1,100			3,087	40	4,227	
8312	Healthcare Services-Palm Trace	B	14,200			42,630	25,840	82,660	Confession of Judgment through 09/30/03.
		P	5,900			13,267	7,808	26,073	Period of Settlement "abeyance" award.
		E	496			1,257	1,861	2,377	
		C	508			1,257	1,861	2,377	
		J		99	115	494	486	494	

Confession of Judgment									
41008	Coral Lake Rehabilitation Center	B		21,710	57,650		84,760	Confession of Judgment through 11/30/03.	
		P							
		E	930		3,378	6,105	13,734		
		C							
		J							
41027	Forest View Care Center	B		6,700				Confession of Judgment.	
		P							
		E							
		C							
		J							
41892	Chen Haven Residential Healthcare Facility	B	38,990	28,340	34,900	145,620	346,590	Confession of Judgment through November 30, 2003.	
		P	14,220	10,342		38,248	99,143	Period of Settlement "abeyance" award.	
		E	1,218	885	1,091	7,235	20,409		
		C	1,218	885	1,091	7,235	20,409		
		J	609	443	545	2,221	8,613		
		P				544	4,806		
41028	Glenfield Nursing Home	B	65,540	60,250	76,310	317,010	835,592	Confession of Judgment through November 30, 2003.	
		P	22,972	21,592	4,164	89,839	231,967	Period of Settlement "abeyance" award.	
		E	2,048	1,883	2,385	7,692	16,624		
		C	2,048	1,883	2,385	7,692	16,624		
		J	1,024	941	1,193	3,846	10,650		
8373	Healthcare Services-Palm Gardens	B	62,100			152,639	389,599	Confession of Judgment through 09/30/03.	
		P	23,571			69,506	187,470	Period of Settlement "abeyance" award.	
		E	2,036			257	8,465		
		C	2,200	2,036	592	1,527	11,409		
		J	1,100			40	4,227		
8312	Healthcare Services-Palm Trace	B	14,200			25,840	82,660	Confession of Judgment through 09/30/03.	
		P	5,900			7,808	26,073	Period of Settlement "abeyance" award.	
		E	496			1,861	2,377		
		C	508	99	115	406	2,377		
		J					494		

Greater Funds Delinquency Report

December 2003

02/17/2004

Case	Institution	12/03	1/04	2/04	3/04	4/04	5/04	6/04	7/04	8/04	9/04	10/04	11/04	12/04	Total	Comments
41932	Port Ambury Care Center	B	P	E	C										87,760	
41717	Palm Rehabilitation and Nursing Center	B	P	E	C										82,328	Confession of Judgment
3313	Prospect Park	B	P	E	C										315,990	Confession of Judgment
8258	Wardens Circle Multicare Center	B	P	E	C										704,285	Confession of Judgment and award through October 2003. Period of Substantive "abeyance" award.
41723	Central Island Nursing Home	B	P	E	C										421,360	Delinquency letter sent and arbitration demanded.
8960	Clearview Nursing Home	B	P	E	C										135,658	COJ in progress thru Jan. 2004. Period of Substantive "abeyance" award.
41024	Confidence Management-Regency Park	B	P	E	C										2,709	Delinquency letter sent and arbitration demanded.
41777	Confidence Management-Windsor Court	B	P	E	C										11,760	Delinquency letter sent and arbitration demanded.
8971	Devon	B	P	E	C										392,443	Delinquency letter sent and arbitration demanded.

Banked Termination in Progress

12/03	1/04	2/04	3/04	4/04	5/04	6/04	7/04	8/04	9/04	10/04	11/04	12/04	Total	Comments
56,000	51,642	4,421	5,186	9,225	12,919	2,503	14,286	6,978	36,015					
110,900	137,670	192,970	364,510	125,267	169,594	2,120	110							
4,800	4,421	5,186	9,225	12,919	2,503	14,286	6,978	36,015						
2,400	2,211	2,693	2,503	14,286	6,978	36,015								
56,000	51,642	4,421	5,186	9,225	12,919	2,503	14,286	6,978	36,015					
110,900	137,670	192,970	364,510	125,267	169,594	2,120	110							
4,800	4,421	5,186	9,225	12,919	2,503	14,286	6,978	36,015						
2,400	2,211	2,693	2,503	14,286	6,978	36,015								

"Greater" Funds Delinquency Report

December 2003

03/17/2004

FD	Initiation	12/03	1/03	2/03	3/03	4/03	5/03	6/03	7/03	8/03	9/03	10/03	11/03	Total	Comments
8973	Eastchester Park	B P E C C J	56,650 31,657 2,710 2,466 2,466 1,355	87,940 28,805 2,466 2,466 1,233	100,690 32,981 2,824 2,824 1,412	262,770 86,066 7,469 6,343 3,584	189,910 157,531 18,934 8,747 5,667	83,020 26,283 7,283 4,713 2,827	1,020,980 569,123 39,566 27,803 15,000	Delinquency letter sent and arbitration demanded. Hearing postponed from 05/07/03. 1st step termination letter sent 01/30/04. Period of Schenckman "abeyance" award.					
8977	Fair Rockaway	B P E C C J	25,500 8,300 700 700 700	22,510 7,374 631 631 631	28,520 9,570 828 828 828	30,100 9,864 1,508 814	3,370 1,171 1,561	111,000 35,379 5,728 2,973	Delinquency letter sent and arbitration demanded. Award issued 01/26/04 through 12/31/03. To be paid within 30 days, unless payment agreement is reached. Benefits re-evaluation scheduled for 5 February 2004.						
8613	Friedwald House	B P S C C J	36,300 11,500 1,000 1,000	33,240 10,886 932 932	44,560 13,414 1,149 1,146	29,490 10,335 2,035	4,250 367	140,000 40,558 6,537 3,098	Delinquency letter sent and arbitration demanded. Shortage rate from payments on adjusted gross wages Period of Schenckman "abeyance" award. 1st step termination letter sent 01/30/04.						
8933	Gold Crest	B P E C C J	31,690 19,300 900 900	821 10	28,260 792 792	40,440 32,997 1,013 949	930 1,022 17,447	101,230 61,166 3,576 2,651	Delinquency letter sent and arbitration demanded. Hearing held Sep 16, 2003. Period of Schenckman "abeyance" award. 1st step termination letter sent 01/30/04.						
8395	Greenpark	B P E C C J	47,220 22,285 1,905 1,905	65,850 31,038 2,657 2,657	51,110 2,063 2,063	82,145 7,083 4,031	53,689 4,596 10,167 4,055	164,180 189,127 23,282 25,873 6,973	Delinquency letter sent and arbitration demanded. Arbitration held 10/21/03. Award to be issued for all but Pension. Period of Schenckman "abeyance" award. 1st step termination letter sent 01/30/04. Hearing of arbitration scheduled 28 January 2004.						
41764	Indian Manor	B P E C C J	26,830 2,824 1,412 1,412	31,870 3,354 1,677 1,677	25,230 1,328 1,328	56,140 8,628 2,956 2,635	53,689 4,596 10,167 4,055	10,080 19,080	Delinquency letter sent and arbitration demanded. Payments resumed for insufficient funds. 1st step termination letter sent 01/30/04.						
8325	Mansfieldville Health Care Center, Inc.	B P E C C J	26,830 2,824 1,412 1,412	31,870 3,354 1,677 1,677	25,230 1,328 1,328	56,140 8,628 2,956 2,635	53,689 4,596 10,167 4,055	140,000 27,335 10,665 12,003 3,094	Delinquency letter sent and arbitration demanded. Award issued 01/26/04 through January 2004. Period of Schenckman "abeyance" award. 1st step termination letter sent 01/30/04.						
8390	Meadowbrook Care Center	B P E C C J	26,700 9,800 2,400 2,400 1,200	34,010 2,361 2,268 2,268 1,134	42,390 2,813 2,813 1,406	75,410 29,404 3,094 3,599 2,548	17,874 17,819 5,459	189,310 74,567 18,034 81,080 6,288	Delinquency letter sent and arbitration demanded. Period of Schenckman "abeyance" award. 1st step termination letter sent 01/30/04.						
41521	New Vista Manor	B P E C C J	18,360 19,310	23,890	60,370	128,230	Hearing concluded 01/27/04 through 12/31/04. Postdated checks 2/6/04 and 2/16/04 for debt thru 12/03. 1st step termination letter sent 01/30/04.								
8323	Rockaway Care Center	B P E C C J	3,100 2,800 500 200 100	2,580 2,673 458 229 114	3,550 3,188 546 273 126	9,410 8,506 1,455 835 364	19,100 17,167 2,956 2,082 938	Delinquency letter sent and arbitration demanded. Period of Schenckman "abeyance" award. 1st step termination letter sent 01/30/04. Hearing of arbitration scheduled 10 February 2004.							

"Greener" Funds Delinquency Report

December 2003

02/17/2004

Case	Investigation	1 Month	2 Month	3 Month	4-6 Month	7-12 Month	1 Year	Total	Comments
41613	Rockaway Care Center	34,790	28,126	35,790	90,810	29,745	9,568	194,860	Delinquency letter sent and arbitration demanded.
		10,000	9,211	11,724	29,745	7,216	7,216	137,886	Period of Settlement "abeyance" award.
		900	789	1,004	2,547	7,255	7,255	17,456	1st step termination letter sent 01/20/04.
		400	384	502	1,273	3,813	3,813	7,605	Hearing of arbitration scheduled 5 February 2004.
8610	Seaside Health Care Center	85,620	112,610	84,480	189,860	27,111	25,979	472,570	Arbitration to issue award through January 2004.
		21,722	28,567	2,601	70,439	27,111	1,476	173,838	COA in progress thru Jan. 2004.
		2,636	3,467	2,601	5,776	1,476	1,209	15,956	Period of Settlement "abeyance" award.
		2,636	3,467	2,601	6,034	1,209	748	15,338	1st step termination letter sent 01/20/04.
8336	Shoreview Nursing Home	101,720	135,180	105,420	238,830	42,763	46,897	575,130	Arbitration to issue award through January 2004.
		33,973	44,251	2,936	109,287	42,763	1,324	216,691	COA in progress thru Jan. 2004.
		2,909	3,789	2,936	6,734	1,324	1,378	17,750	Period of Settlement "abeyance" award.
		2,509	3,789	2,936	6,734	1,378	1,756	17,756	1st step termination letter sent 01/20/04.
41035	South Shore Nursing Home	33,100	4,580	38,600	96,078	38,300	161	213,258	Delinquency letter sent and arbitration demanded.
		12,800	1,080	14,162	35,067	38,300	33,491	95,520	1st step termination letter sent 01/20/04.
		1,080	1,212	1,002	3,002	1,727	7,821	7,821	Period of Settlement "abeyance" award.
		500	500	605	1,301	514,580	3,107	1,087,200	Delinquency letter sent and arbitration demanded.
8377	Spale Rock	98,400	88,210	107,570	281,990	199,620	387,054	387,054	Hearing postponed from 05/07/03.
		30,680	29,123	33,348	92,465	14,236	30,263	26,483	1st step termination letter sent 01/20/04.
		2,600	2,493	3,026	6,784	11,570	26,483	26,483	Period of Settlement "abeyance" award.
		2,600	2,493	3,026	6,784	11,570	15,571	542,550	Delinquency letter sent and arbitration demanded.
		1,300	1,317	1,513	3,954	7,232	2,377	40,530	Shutages with from payments on reduced contribution rates.
8830	Union Plaza Nursing Home	50,150	64,370	47,910	90,550	14,105	18,617	18,617	Hearing held 02/10/04. Follow up hearing scheduled 01/30/04.
		1,880	2,381	1,774	2,294	4,524	6,167	6,167	Period of Settlement "abeyance" award.
		1,880	2,381	1,774	822	3,023	3,023	3,023	1st step termination letter sent 01/20/04.
		940	1,196	837	1,301	514,580	3,107	1,087,200	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance" award.
		9,185	18,976	10,355	24,104	5,175	18,980	7,107,218	Delinquency letter sent and arbitration demanded.
		547,430	1,028,430	1,028,430	2,224,990	2,224,990	2,224,990	2,224,990	Delinquency letter sent and arbitration demanded.
		281,925	230,833	160,801	92,811	626,845	380,878	2,662,213	Hearing postponed from 05/07/03.
		120,787	53,000	44,153	74,783	38,409	30,541	10,000	1st step termination letter sent 01/20/04.
		50,807	131,680	40,444	66,127	10,700	32,012	4,900	Period of Settlement "abeyance"

McDermott Will & Emery

Boston Brussels Chicago Düsseldorf London Los Angeles Miami Munich
New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Joel E. Cohen
Attorney at Law
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212.547.5568

December 4, 2007

BY HAND

Alvin Blyer, Esq.
Regional Director
National Labor Relations Board
Region 29
One Metrotech Center - North
10th Floor
Brooklyn, New York 11201

Re: 1199 SEIU (Kingsbridge Heights Rehabilitation and Care Center) 29-CB-

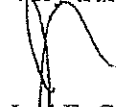
Dear Mr. Blyer,

We represent charging party Kingsbridge Heights Rehabilitation and Care Center ("Kingsbridge") in the above referenced matter. Enclosed please find an original and eight copies of the charge which alleges that 1199 SEIU has violated Section 8(b)(3) of the Act. The charge is being filed in Region 29 due to its relationship to Case No. 29-CA-27502.

Kingsbridge and 1199's last collective bargaining agreement expired in 2005. The parties have not negotiated for a new agreement since 2006. In August 28, 2007, after 1199 repeatedly harassed Kingsbridge over "late" payments to the 1199 benefit funds (with payments actually being made no later than scores of other 1199 represented healthcare institutions,) Kingsbridge proposed that it be given up to seven months to make payments to the funds on a go forward basis. Kingsbridge asked 1199 to bargain regarding this issue. A copy of a letter I sent on behalf of Kingsbridge to counsel for 1199 with fax receipt confirmation is enclosed. To date 1199 has not responded.

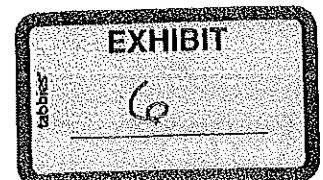
While simultaneously ignoring Kingsbridge's request to bargain, 1199 has now cut off healthcare benefits for Kingsbridge's employees due to "late payments" and has announced plans to strike Kingsbridge, ostensibly over this very issue. Such a strike would be devastating to Kingsbridge and its residents. We therefore ask the Region to seek 10(j) relief.

Very truly yours,


Joel E. Cohen

U.S. practice conducted through McDermott Will & Emery LLP.

340 Madison Avenue New York, New York 10173-1922 Telephone: 212.547.5400 Facsimile: 212.547.5444 www.mwe.com
NYK 1134622-1.057806.0011



FORM NLRB-608
(9-07)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATIONS
OR ITS AGENTS

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
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INSTRUCTIONS: File an original together with four copies and a copy for each additional charged party named in Item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name 1199 Service Employees International Union, United Health Care Workers East	b. Union Representative to contact Mike Rifkin
c. Telephone No. 212-582-1890 Fax No. () -	d. Address (Street, city, state, and ZIP code) 310 West 43rd Street, New York, New York 10036

e. The above named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(a) (list subsections) **(3)** of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

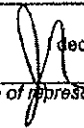
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since on or about August 28, 2007, the above named labor organization has refused to bargain with Kingsbridge Heights Rehabilitation and Care Center regarding fringe benefit fund contributions.

3. Name of Employer Kingsbridge Heights Rehabilitation and Care Center	4. Telephone No. 718-796-8100 Fax No. (718) 796-8182
5. Location of plant involved (street, city, state and ZIP code) 3400-26 Cannon Place, Bronx, New York 10463	6. Employer representative to contact Joel E. Cohen
7. Type of establishment (factory, mine, wholesaler, etc.) Nursing Home	B. Identify principal product or service Healthcare
9. Number of workers employed 300	
10. Full name of party filing charge Kingsbridge Heights Rehabilitation and Care Center	
11. Address of party filing charge (street, city, state and ZIP code.) 3400-26 Cannon Place, Bronx, New York 10463	12. Telephone No. (718) 796-8100 Fax No. (718) 796-8182

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By  **Joel E. Cohen/Attorney**
(signature of representative or person making charge) (Print/type name and title or office, if any)

Address **McDermott Will & Emery LLP 340 Madison Avenue** (Fax) **(212) 547-5374** **12-11-07**
New York, New York 10173 **(212) 547-5566** (Telephone No.) (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

***** -COMM. JOURNAL- ***** DATE AUG-27-2007 ***** TIME 15:42 *****

MODE = MEMORY TRANSMISSION

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END-AUG-27 15:42

FILE NO. 4543

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McDermott Will & Emery

Houston Brussels Chicago Düsseldorf London Los Angeles Miami Milan
 Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.

FACSIMILE

Date: August 27, 2007

Time Sent:

To:	Company:	Facsimile No:	Telephone No:
Hanan Kolko, Esq.	Meyer, Suozzi, English & Klein, P.C.	212-239-1311	212-239-4999
From:	Joel E. Cohen	Direct Phone:	212.547.5566
E-Mail:	jcohen@mwe.com		
Sent By:		Direct Phone:	
Client/Matter/Tkpr:	057806-0011-2974	Original to Follow by Mail:	No
		Number of Pages, Including Cover:	2
Re:	Kingsbridge Heights and 1199		

Message:

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IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL AS SOON AS POSSIBLE.

Main Facsimile: 212.547.5444 Facsimile Operator: 212.547.5400

U.S. practice conducted through McDermott Will & Emery LLP.
 340 Madison Avenue New York, New York 10017-4013 Telephone: 212.547.5400

NYK 1061369-1.057806.0011

McDermott Will & Emery

Boston Brussels Chicago Düsseldorf London Los Angeles Miami Munich
New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Beijing)

Joel E. Cohen
Attorney at Law
jcohen@mwe.com
212.547.5568

August 27, 2007

VIA FACSIMILE

Hanan B. Kolko, Esq.
Meyer, Suozzi, English & Klein, P.C.
1350 Broadway, Suite 501
New York, NY 10018

Re: Kingsbridge Heights and 1199

Dear Hanan:

We represent Kingsbridge Heights Rehabilitation Care Center. Kingsbridge wishes to negotiate a change in how it makes payments to the 1199 fringe benefit funds. Kingsbridge proposes that it be given up to 7 months to make payments to the various funds without being considered in arrears.

Please contact me with dates when the Union is available to negotiate.

Very truly yours,



Joel E. Cohen

U.S. practice conducted through McDermott Will & Emery LLP.

340 Madison Avenue New York, New York 10173-1922 Telephone: 212.547.5400 Facsimile: 212.547.5444 www.mwe.com
NYK 1118343-1.057806.0011

McDermott Will & Emery

Boston Brussels Chicago Düsseldorf London Los Angeles Miami Munich
New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Joel E. Cohen
Attorney at Law
jcohen@mwe.com
212.547.5566

January 31, 2008

BY FAX

Alvin Blyer, Esq.
Regional Director
National Labor Relations Board
Region 29
One Metrotech Center - North
10th Floor
Brooklyn, New York 11201

Re: 1199 and Kingsbridge Heights

Dear Mr. Blyer,

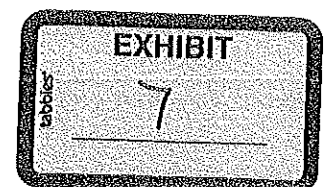
As you know we represent Kingsbridge Heights Rehabilitation Care Center ("Center"). I am writing to request a meeting with you. On Monday morning January 28, 2008, moments before the hearing before ALJ Fish on whether the Center was in violation of the settlement in the prior 8(a)(5) case, Henry Powell told me that the Center's pending related 8(b)(3) charge against 1199 for refusing to bargain over when payments to the 1199 benefit funds would be considered in arrears, was being dismissed. Mr. Powell said this was due to a Regional determination that the Center had implicitly withdrawn its request to bargain (a) at a "negotiating session" between Helen Sieger, the Center's owner and 1199 Vice President Mike Rifkin; in late November 2007 held at a kosher deli in Riverdale (b) in a December 11, 2007 letter I wrote (in response to an 1199 flyer that there has been no contact between the parties since 2000 because Helen Sieger has "refused to bargain") to the effect that the "only" open issue between the parties was how arbitrations would be handled.

No one from the Region ever asked about the second "factor" and as to the first "factor", as I told the investigator only last week, in a phone conversation, the "negotiating session" was not a negotiating session but a meeting requested by Mike Rifkin so he could tell Helen Sieger that he was going to shut the Center down and put her out of business "as an example to the industry." No contract terms were discussed at this meeting. In fact, Mr. Rifkin began the meeting by saying "I am not here to negotiate".

On the morning of June 28th, I called you to discuss this matter but I have not heard back from you. I know how courteous and fair you are so I assume this was an oversight.

U.S. practice conducted through McDermott Will & Emery LLP.

340 Madison Avenue New York, New York 10173-1922 Telephone: 212.547.5400 Facsimile: 212.547.5444 www.mwe.com
NYK 1144475-1,057806.0011



Alvin Blyer, Esq.
January 31, 2008

In advance of speaking directly with you, I ask that you consider the following:

1) The only substantive issue between the parties since 2005 has been the arbitration issue. As I testified in the previous 8(a)(5) case without any contradiction, the Union – Jay Sackman in particular – told the Center that other 1199 institutions are in arrears on benefit fund contributions but that the Union does not cut off health benefits for them because of the existence of a contract. He told us that if we signed the contract the Union wanted, then the late payment of benefit fund contributions would not be a big issue for the Union. Mr. Sackman admitted that the Union was using the health benefit cut-off as a means of pressuring the Center into agreeing to the Union's terms.

2) In August 2007 when the Union used the "late payment" issue to threaten a cut-off in health benefits again and to pursue a reopening of the 8(a)(5) case, we asked the Union in writing to bargain over when payments would be considered "late". The Union ignored this request. This is undisputed.

3) Not only did the Center make this request to bargain in writing, it filed the 8(b)(3) charge over the Union's refusal to bargain and raised it explicitly in writing as a defense to the reopened 8(a)(5) charge, was actively pursuing this issue before the Region and made clear in writing that it would pursue it as a defense before a ALJ Fish. This conduct is completely inconsistent with a claim that the Union believed the Center was "implicitly withdrawing" its demand to bargain over the payment schedule in late November or December 2007. What is absolutely amazing to me is that at no time until I was notified of the "dismissal" on January 28th did 1199 or the Region ask if any alleged "non-raising" of the payment issue at a meeting in a deli, or my characterization of the arbitration issue being the "only" open issue between the parties in a December 11, 2007 letter (written in response to a flyer falsely saying Helen Sieger had totally refused to bargain since 2000) – in fact meant a withdrawal of the August 2007 request to bargain over a payment schedule.

4) As I explained at the hearing on the 28th, the characterization of the arbitration dispute as the "only" issue was meant to convey that it was the only substantive issue, especially since Jay Sackman had always told us "late payments" are not pursued as vigorously if there is a contract. As stated above, to the degree anyone was confused by this letter, someone could have asked for clarification. I doubt seriously that anyone could have legitimately thought that the payment schedule issue was being withdrawn in light of the fact that we had not withdrawn the ULP charge or our defense to the reopened 8(a)(5).

5) To the degree there was any "confusion", my testimony on January 28, 2007 and the attached letter from Helen Sieger to Mike Rifkin, now clears up the confusion. Is 1199 now willing to bargain over this issue?


6) Finally, to the degree that 1199 claims that it didn't bargain over this issue because it thought that in late November and/or mid December the request to bargain had been implicitly withdrawn, why didn't it agree to bargain in August, September, October and virtually all of November of 2007? What was its excuse then? At the very least, based on the "facts" the

Alvin Blyer, Esq.
January 31, 2008

Region was supposedly relying on to dismiss the 8(b)(3) charge, why wasn't a "merit dismissal" appropriate?

These are the issues I wish to discuss with you. Thank you in advance for your kind consideration.

Very truly yours,



Joel E. Cohen



January 30, 2008

Mike Rifkin
Executive Vice President
1199 SEIU
United Healthcare Workers East
310 West 43rd Street
New York, New York 10036

VIA FACSIMILE 212-399-9395

Dear Mr. Rifkin:

This responds to your January 25 and January 29, 2008 letters. Our proposal is to use the American Arbitration Association ("AAA") for arbitrations, not "one or more arbitrators" who also are on an AAA panel as permanent arbitrators. There is a big difference as you surely know. Your claim that all we ever wanted was to replace Mr. Scheinman is false. At an NLRB hearing on January 28, 2008 your attorney, Mr. Kolko, tried to spin your "offer" to an NLRB Judge as the Union accepting our proposal, but the NLRB Judge called him on it and made clear that the Union was not agreeing to Kingsbridge's proposal. If you want to accept our proposal say so, stop playing games. If you want to work out terms for payment of 1199 fringe benefit fund contributions as we asked you in writing in August 2007 (and which the Union ignored and instead promptly cut off health benefits) please let us know. Just in case you really were "confused" at no time did we intend to drop our proposal that we negotiate new payment terms.

Moreover, please stop telling our vendors and referral sources that we will not provide quality care during the strike. We will, and the Union and your personal continued attempts to destroy Kingsbridge and me personally will not only fail but will continue to be pursued in litigation. I note that you have told me and my attorney that you don't care if you cost all the Kingsbridge employees their jobs, as long as it helps "make me an example to the industry" of what 1199 and its individual officers will do to employers who don't do what they want.

NYK 1144051-1.057806.0011

3400 - 26 Cannon Place • Bronx, New York, 10463 • Tel. 718.796.8100 • Fax. 718.796.8182

Mike Rifkin
January 30, 2008
Page 2

As to union dues the law is clear. After the expiration of a union contract, there is no obligation to continue the "union security clause" and employees do not have to pay union dues to keep their jobs. Both you and any employees are free to call the NLRB's information officer (212) 264-0300 or (718) 330-7723 and confirm that this is the law.

Finally, please inform your "temporary organizer" Witold ("Victor") Nizio that if he continues to threaten our managers for doing their jobs, we will file 8(b)(1)(B) charges with the NLRB for interfering with managers and supervisors. Also inform him that we have the right to ask our employees if they plan on striking-as we have an obligation and a right to plan patient care coverage in the face of a strike threat. We have and will continue to tell employees that they have a right to strike without retaliation, and that in no case will they be fired for striking but that we as a nursing home have a right to know in advance of a strike of their intentions. Contrary to what Mr. Nizio claims, employees who tell us that they will not strike and then strike can be discharged in a health care setting for jeopardizing patients' well being. To the degree Mr. Nizio is telling employees to lie to us about their intentions he is intentionally jeopardizing those employees. Again I invite you and our employees to check with the NLRB to verify this.

Very truly yours,


Helen Sieger

FORM NLRB-608
(9-07)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATIONS
OR ITS AGENTS

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE	
Case 2-CB- 21511	Date Filed 13/26/08

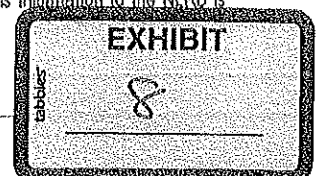
INSTRUCTIONS: File an original together with four copies and a copy for each additional charged party named in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT		
a. Name 1199 SEIU, Health Care Workers East		b. Union Representative to contact Mike Rifkin
c. Telephone No. () - Fax No. () -	d. Address (Street, city, state, and ZIP code) 310 West 43rd Street, New York, NY 10173-1922	
e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practice(s)) See attachment		
3. Name of Employer Kingsbridge Heights Rehabilitation and Care Center		4. Telephone No. () - Fax No. () -
5. Location of plant involved (street, city, state and ZIP code) 3400-3428 Cannon Place, Bronx, New York 10463		6. Employer representative to contact David F. Jasinski, Esq.
7. Type of establishment (factory, office, wholesaler, etc.) long term health care facility	8. Identify principal product or service	9. Number of workers employed approximately 200
10. Full name of party filing charge David F. Jasinski, Esq.		
11. Address of party filing charge (street, city, state and ZIP code.) Jasinski & Williams, PC, Ten Park Place, Newark, NJ 07102		12. Telephone No. () - Fax No. () -
13. DECLARATION I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief. By (signature of representative or person making charge) Jasinski & Williams, PC, Ten Park Place, Newark, NJ 07102 Address Attorney DAVID F. JASINSKI (Print/Type name and title or office, if any) (Fax) 973-824-6061 973-824-9700 03/25/08 (Telephone No.) (date)		

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



ATTACHMENT

In or around January 2008, 1199 SEIU, Health Care Workers East (the "Union") unlawfully conditioned the settlement of a collective bargaining agreement with Kingsbridge Heights Rehabilitation and Care Center ("Kingsbridge") on a permissive subject of bargaining. Specifically, the Union insisted that Kingsbridge pay all of its alleged delinquent contributions into the Greater New York Funds (the "Funds"). (A copy of the proposed settlement agreement is annexed hereto.) By making such payments to the Funds a condition to settling the contract, the Union is unlawfully seeking to compel Kingsbridge to resolve a pending lawsuit filed by the Funds in federal district court in November 2007, and unlawfully enforce a 2006 NLRB settlement agreement. Such an act is per se bad faith bargaining by the Union.

On or about February 20, 2008, the Union engaged in an illegal strike based on Kingsbridge's refusal to settle the contract on a permissive subject of bargaining -- Kingsbridge's immediate and full payment of all alleged delinquencies into the Funds.

1199 - Kingsbridge Nursing Home Settlement Agreement

This dispute should be settled right away, for the benefit of workers, residents and management.

Therefore

If Kingsbridge Heights Nursing Home agrees to number 1 and 2 below, the Union will agree to number 3 and 4 below

The Agreement

1. Kingsbridge Heights Nursing Home agrees to the contract terms of the 6/1/04 - 4/30/2011 contract between 1199 SEIU and Greater New York Healthcare Facilities Assoc. which covers most NYC 1199 Nursing Home members.
2. Kingsbridge Heights Nursing Home will pay, prior to February 20, 2008, all delinquencies owed to the Greater New York Funds and agrees to continue the Benefit Fund in the new contract.
3. 1199 agrees with Kingsbridge Heights Nursing Home's request to have the American Arbitration Association and therefore will accept arbitrators admitted to the National Academy of arbitrators from a panel provided by the American Arbitration Association under its labor arbitration rule.
4. 1199 agrees that if Kingsbridge Heights Nursing Home agrees to number 1 and 2 above, 1199 will withdraw the 1199 strike notice as soon as Ms. Sieger signs a full contract that includes 1 and 2 above.

Mike Rifkin, Executive Vice President

Date _____

Helen Sieger, Owner

Kingsbridge Heights Nursing Home



August 5, 2008

Ms. Celeste Mattinas
Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza – Room 3614
New York, NY 10278-0104

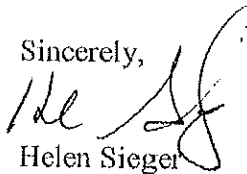
VIA FACSIMILE: (212) 264-2450

Re: 1199SEIU United Healthcare Workers East
(Kingsbridge Heights Rehabilitation and Care Center)
Case No. 2-CB-21511

Dear Ms. Mattinas,

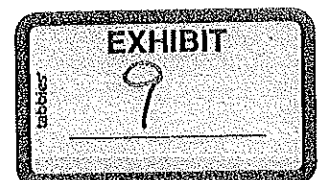
Enclosed for re-filing is the charge in the reference case. This is being re-filed pursuant to Ms. Slahetka's correspondence, a copy of which is also attached.

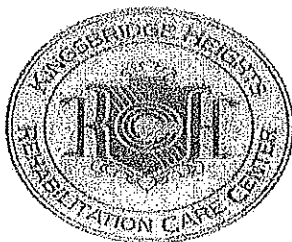
Sincerely,



Helen Sieger

cc: Mr. Hanan Kolko
Meyer, Suozzi, English and Klein, P.C.
1350 Broadway – Suite 501
New York, NY 10018-0026
(Via regular and certified mail)





**Kingsbridge Heights
Rehabilitation Care
Center**

Fax

To: Ms. Celeste Mattinas
(NLRB Regional Director)

From: Helen Sieger

Fax: (212) 264-2450

Pages: 8 (including cover sheet)

Phone:

Date: 8/5/2008

Re:

CC:

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

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***** -IND. XMT JOURNAL- ***** DATE AUG-05-2008 TIME 15:26 *****

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United States Government
NATIONAL LABOR RELATIONS BOARD
Region 2
26 Federal Plaza -- Room 3614
New York, New York 10278-0104

Tel. 212-264-0313
Fax: 232-264-2450

April 25, 2008

VIA FACSIMILE AND REGULAR MAIL

Helen Sieger
Kingsbridge Heights Rehabilitation and Care Center
3400-26 Cannon Place
Bronx, NY 10463

Re: 1199SEIU United Healthcare Workers East
(Kingsbridge Heights Rehabilitation and Care Center)
Case No. 2-CB-21511


Dear Ms. Sieger:

I am writing to confirm our telephone conversation yesterday. As we discussed, all evidence in support of the allegations in the charge, including your affidavit if you choose to provide one, still must be presented by Wednesday, May 7, 2008. However, if you are not able to present evidence in support of the allegations by May 7, 2008, you may withdraw the charge. You may then re-file the charge when you are able to present evidence. Please note that Section 10(b) of the National Labor Relations Act prohibits any action on an unfair labor practice charge that is filed and served more than six (6) months after the alleged unfair labor practice occurs.

If you would like to withdraw the charge, you may do so either by calling me or by sending me a short letter. If no evidence is submitted by May 7th, and you have not withdrawn the charge, I will recommend to the Regional Director that she dismiss the case for lack of cooperation.

Yesterday we did not discuss whether or not you are available for the appointment that I scheduled on April 30, 2008, at 2:00 p.m. If you are unable to make the appointment, please call me to reschedule.

Sincerely,


Nancy Slahetka
Board Attorney



May 6, 2008

Ms. Nancy Slahetka
Board Attorney
National Labor Relations Board
Region 2
26 Federal Plaza – Room 3614
New York, NY 10278-0104

VIA FACSIMILE; (212) 264-2450

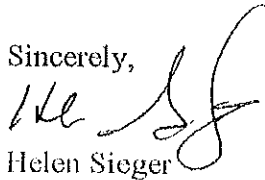
Re: Case No. 2-CB-21511

Dear Ms. Slahetka,

Pursuant to your letter of April 25, 2008, I will withdraw the charge at this point and re-file at a later date.

I hope to have representation shortly. I am also hopeful that I have not prejudiced myself in any way as per your representation to me.

Sincerely,


Helen Sieger

HS/mv

***** --IND. XMT JOURNAL- ***** DATE MAY-06-2008 TIME 10:25 *****

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DESTINATION = 12122642450
RECEIVED ID = /
RESOLUTION = STD

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATIONS
OR ITS AGENTS

DO NOT WRITE IN THIS SPACE	
Case 2-CB- 21511	Date Filed 1/3/26/08

INSTRUCTIONS: File an original together with four copies and a copy for each additional charged party named in Item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT		
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c. Telephone No. () - Fax No. () -	d. Address (Street, city, state, and ZIP code) 310 West 43rd Street, New York, NY 10173-1922	
e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) See attachment		
3. Name of Employer Kingsbridge Heights Rehabilitation and Care Center		4. Telephone No. () - Fax No. () -
5. Location of plant involved (street, city, state and ZIP code) 3400-3426 Cannon Place, Bronx, New York 10463		6. Employer representative to contact David F. Jasinski, Esq.
7. Type of establishment (factory, mine, wholesaler, etc.) long term health care facility	8. Identify principal product or service	9. Number of workers employed approximately 200
10. Full name of party filing charge David F. Jasinski, Esq.		
11. Address of party filing charge (street, city, state and ZIP code.) Jasinski & Williams, PC, Ten Park Place, Newark, NJ 07102		12. Telephone No. () - Fax No. () -
<p align="center">13. DECLARATION</p> <p>I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.</p> <p>By <u>(signature of representative of person making charge)</u> Attorney <u>DAVID F. JASINSKI</u> (Print/type name and title or office, if any)</p> <p><u>Jasinski & Williams, PC, Ten Park Place, Newark, NJ 07102</u> (Fax) <u>973-824-6061</u> Address <u>973-824-9700</u> 03/25/08 (Telephone No.) (date)</p>		



WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ATTACHMENT

In or around January 2008, 1199 SEIU, Health Care Workers East (the "Union") unlawfully conditioned the settlement of a collective bargaining agreement with Kingsbridge Heights Rehabilitation and Care Center ("Kingsbridge") on a permissive subject of bargaining. Specifically, the Union insisted that Kingsbridge pay all of its alleged delinquent contributions into the Greater New York Funds (the "Funds"). (A copy of the proposed settlement agreement is annexed hereto.) By making such payments to the Funds a condition to settling the contract, the Union is unlawfully seeking to compel Kingsbridge to resolve a pending lawsuit filed by the Funds in federal district court in November 2007, and unlawfully enforce a 2006 NLRB settlement agreement. Such an act is per se bad faith bargaining by the Union.

On or about February 20, 2008, the Union engaged in an illegal strike based on Kingsbridge's refusal to settle the contract on a permissive subject of bargaining -- Kingsbridge's immediate and full payment of all alleged delinquencies into the Funds.

1199 – Kingsbridge Nursing Home Settlement Agreement

This dispute should be settled right away, for the benefit of workers, residents and management.

Therefore
If Kingsbridge Heights Nursing Home agrees to number 1 and 2 below, the Union will agree to number 3 and 4 below

The Agreement

1. Kingsbridge Heights Nursing Home agrees to the contract terms of the 6/1/04 – 4/30/2011 contract between 1199 SEIU and Greater New York Healthcare Facilities Assoc. which covers most NYC 1199 Nursing Home members.
2. Kingsbridge Heights Nursing Home will pay, prior to February 20, 2008, all delinquencies owed to the Greater New York Funds and agrees to continue the Benefit Fund in the new contract.
3. 1199 agrees with Kingsbridge Heights Nursing Home's request to have the American Arbitration Association and therefore will accept arbitrators admitted to the National Academy of arbitrators from a panel provided by the American Arbitration Association under its labor arbitration rule.
4. 1199 agrees that if Kingsbridge Heights Nursing Home agrees to number 1 and 2 above, 1199 will withdraw the 1199 strike notice as soon as Ms. Sieger signs a full contract that includes 1 and 2 above.

Mike Rifkin, Executive Vice President



Date _____

Helen Sieger, Owner
Kingsbridge Heights Nursing Home

A threat to care for patients in need. A denial of decency for their devoted caregivers.

Help us stop the greed

and prevent a strike at Kingsbridge Heights Nursing Home

While Kingsbridge Heights Nursing Home owner Helen Sieger is reaping her profits, the dedicated caregivers who feed, bathe, lift and comfort the frail and elderly are struggling to survive.

Having worked without a contract for nearly eight years, these compassionate healthcare workers were left with an even bigger burden late last year, when Helen Sieger stopped paying for health benefits for them and their children. *What makes it even worse is that this is one of the most profitable nursing homes in the state.*

The caregivers of Kingsbridge Heights have been left with the difficult choice of going on strike in the coming weeks. Without the ability to support their families, or the health benefits that they depend on, they have no other choice.

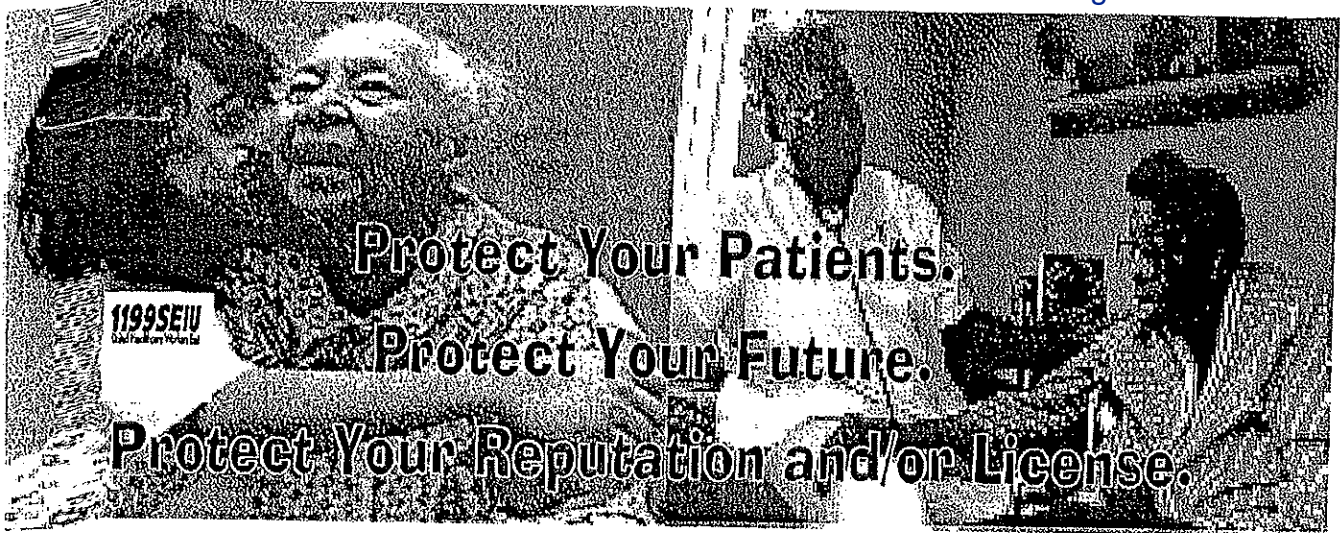
You can help.

Call Helen Sieger today at (718) 796-8100. Tell her to put care and decency ahead of her profits.

1199SEIU
Union Healthcare Workers East

EXHIBIT

10



Are you a strike breaker at Kingsbridge Heights Nursing Home?

Here are some things to think about *before* you cross the picket line.

- **This** could be you! Imagine waking up one morning and your boss decides to ~~cut~~ your health insurance? That happened to us. Helen Sieger is a boss who ~~thinks~~ she can fire employees at her whim and is trying to throw out our union, which protects workers. She has been fined by the National Labor Relations Board several times and she doesn't care. She continues to violate labor law. *That's* why we were forced to strike. This could happen to you too! Wouldn't *you* want the support of other healthcare workers and the community?
- **Meanwhile**, in 2006, Kingsbridge Heights reported over 5 million dollars in ~~profit~~; most paid by the Medicaid program. Medicaid dollars are *your* tax dollars! *(The report also includes a lease for a Jaguar at \$1,040/month.)*
- **Workers** like you, not having all the information, have crossed the picket line and went to work in the nursing home. They then reported working 12-16 hour shifts with deteriorating conditions. They unknowingly put their selves and their licenses and reputations at risk by working at a facility where patient care may not be the priority. Many left once they realized what's actually going on. Some have joined us on the picket line.
- **Kingsbridge Heights** is currently being audited by the Health Department. And residents' families are reporting complaints to the Health Department every day.



Don't let yourself be used. Don't jeopardize your livelihood and the safety of nursing home residents. Many other 1199SEIU institutions are hiring qualified workers. **STOP!** Don't cross the picket line. Ask us how we can help you get a different job. Or call us at (212) 261-2332.

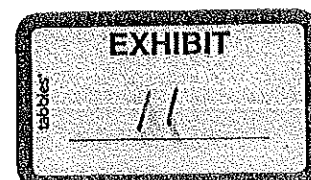
KINGSBRIDGE HEIGHTS CARE CENTER

65989

LOCAL 144 NH WELFARE FUND
P O BOX 796
TIMES SQUARE STATION
NEW YORK, NY 10108-0796

11/10/2007 \$112,179.10

INVOICE #	DESC.	AMOUNT
OCT 07		112,179.10



KINGSBRIDGE HEIGHTS CARE CENTER

65992

LOCAL 144/1199 CHLD CARE FUND
TIMES SQUARE STATION
NEW YORK NY 10108

11/10/2007 \$2,162.52

INVOICE #	DESC.	AMOUNT
OCT 07		2,162.52

KINGSBRIDGE HEIGHTS CARE CENTER

65993

LOCAL 144/1199 JOB SECURITY
FUND
TIMES SQUARE STATION
NEW YORK NY 10108

11/10/2007 \$1,351.82

INVOICE #	DESC.	AMOUNT
OCT 07		1,351.82

KINGSBRIDGE HEIGHTS CARE CENTER

65994

LOCAL 144/1199 WORKERS
PARTICIPATION FUND
TIMES SQUARE STATION
NEW YORK NY 10108

11/10/2007 \$1,351.82

INVOICE #	DESC.	AMOUNT
OCT 07		1,351.82



May 6, 2008

Mr. Hanan Kolko
Meyer, Suozzi, English and Klein, P.C.
1350 Broadway – Suite 501
New York, NY 10018-0026

VIA FACSIMILE: (212) 239-1311

Dear Mr. Kolko,

In August 2007, our labor counsel Joel Cohen filed an NLRB Charge against 1199 for failure to negotiate.

We requested a payment plan for monies owed. This request was ignored. The Regional Director dismissed the charge in January of 2008 despite its significant relevance to the case before Judge Fish that I am being forced to proceed in, without labor counsel.

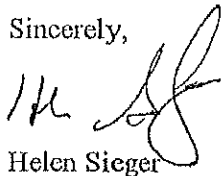
We later received a letter from the acting Regional Director accepting a withdrawal of this charge but have not seen the letter from Joel Cohen withdrawing same.

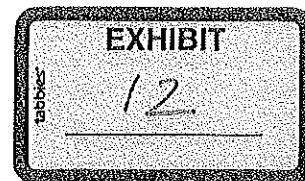
In March of 2008, a letter was sent to Counsel for 1199, proposing that Kingsbridge Heights Rehabilitation Care Center procure its own Health Care Benefit Plan for its employees rather than through 1199. This, so that 1199 will not have the ability to arbitrarily discontinue the medical benefits to our employees. Once again we were ignored.

We are now additionally proposing that Kingsbridge Heights Rehabilitation Care Center will procure its own Pension Plan for its employee instead of the 1199 Pension Plan.

We anticipate a prompt response.

Sincerely,


Helen Sieger



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

-----X
:
:
1199 SEIU, UNITED
HEALTH CARE WORKERS EAST

and

KINGSBRIDGE HEIGHTS
REHABILITATION CARE CENTER
:
:
:
-----X

: Case Nos. 2-CA-37660
2-CA-37898

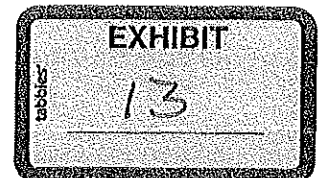
**KINGSBRIDGE HEIGHTS REHABILITATION
CARE CENTER'S EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE WITH BRIEF SUPPORTING ITS EXCEPTIONS**

McDermott Will & Emery LLP
340 Madison Avenue
New York, New York 10173
(212) 547-5400

Attorneys for Respondent
Kingsbridge Heights
Rehabilitation Care Center

Of Counsel:

Joel E. Cohen



I.

STATEMENT OF THE CASE

Pursuant to 29 C.F.R. § 102.46, respondent Kingsbridge Heights Rehabilitation Care Center ("Respondent" or the "Center"), by and through its attorneys, McDermott Will & Emery LLP, submits this brief in support of its exceptions to the July 9, 2007 Decision (the "Decision") of Administrative Law Judge Mindy E. Landow ("ALJ Landow"). In the Decision, ALJ Landow made two improper findings: (i) in March 2006, the Center unlawfully videotaped picketing employees who were members of Local 1199 SEIU, United Health Care Workers East ("1199" or the "Union") and (ii) the Center falsely told employees that their reinstatement may be delayed if they participated in a threatened strike.

Despite ALJ Landow's findings to the contrary, a review of the record clearly demonstrates that the Center, as a healthcare institution, had legitimate business reasons for videotaping Union members who have a history of unpredictable and dangerous tactics that threaten the Center's ability to properly care for its residents. More specifically, the Center must be able to gather evidence to support charges against the Union based on their past unpredictable and threatening conduct. The Center has been videotaping Union pickets and demonstrations for over a decade with the Union's knowledge and without any protest from the Union. It is undisputed that no employee has ever been retaliated against for participation in a videotaped picket or demonstration. Moreover, the evidence adduced at the hearing demonstrates that the Center did not mislead employees about their reinstatement rights in the event of a strike; in fact, the Center clearly informed employees of the status of negotiations with a temporary agency and the possible impact those negotiations may have on the timing of any striking employee's reinstatement at the Center.

In sum, and as set forth in greater detail below, because the Decision is unsupported by the record evidence and by existing law, the Board should not adopt the Decision.

II.

ISSUES PRESENTED

1. Did a healthcare institution have a legitimate business reason to videotape its picketing employees based on the Union's unpredictable history of threats and violence?

2. Did the Center accurately inform employees who threatened to strike of the Center's right to delay reinstatement pursuant to an agreement with a temporary agency in the context of a pending economic strike?

III.

BACKGROUND FACTS AND PROCEDURAL HISTORY¹

The Center is "engaged in the operation of a nursing home providing residential nursing care to patients." (GC Ex. 1 at Complaint ¶2(a)). The Center prides itself on its commitment to providing first-rate care to its residents in conformity with its long tradition of quality and comfort. Moreover, the Center is primarily responsible, per state codes, for ensuring that residents feel safe and protected in their vulnerable state of health. (Tr. 122). To this end, the Center has permanent surveillance cameras both on the exterior and interior of the Center to monitor the premises as a basic security measure. (*Id.*). Moreover, the surveillance system allows any state regulatory agency to gather information about events occurring on the Center's premises for purposes of state-mandated surveys and inspections. (Tr. 122-23).

¹ All references to Exhibits introduced by the General Counsel during the Hearing are referred to herein as "GC Ex. [exhibit number]." Exhibits introduced by the Center are referred to herein as "Resp. Ex. [exhibit number]." All references to the Transcript of the February 22, 2007 Hearing appear as "Tr. [page number]." All references to ALJ Landow's Decision appear as "Decision [page number], lines [line numbers]."

The last Collective Bargaining Agreement (the "CBA") between the Center and the Union expired on April 30, 2005. (Tr. 23). The contract has not since been extended between the parties.² (*Id.*). The Union has a long history of improper conduct at the Center to pressure the Center to cede to the Union's demands.³

In February 2006, 1199 sent a Section 8(g) notice to the Center notifying the Center of its intention to picket, allegedly due to a delay in payment of medical contributions to the Union's welfare fund.⁴ (GC Ex. 6). The picket took place on March 15, 2006. (Tr. 33, 66, 86). Given the Center's experience with 1199's aggressive tactics, and the Center's prior knowledge of the Union's disruptive tactics at other healthcare facilities (such as the highly inappropriate conduct that took place at Staten Island University Hospital)⁵, the Center, as it had done on prior occasions, had two non-Unionized employees of the Center capture the picket on video to preserve evidence for the Board or for any potential State court legal proceedings (*e.g.*, seeking an injunction for blocking the Center's entrance). (Tr. 148). *For over a decade, the Center has taped Union activity with the Union's knowledge and without any protest.* (Tr. 44, 46, 80-81, 95-

² The only reason a renewed CBA has failed to come to fruition is because the parties could not come to an agreement on the appointment of an acceptable arbitrator. The Center wanted to use the American Arbitration Association, while 1199 wanted to use Martin Scheinman, the "Impartial Industry Chairman."

³ For example, in December 2000, within the context of a labor dispute, 1199 delegates trespassed into the patient care areas of the Center in the middle of the night with photographers and reporters from The New York Daily News (the "Daily News Break-In"). (Tr. 123-24). On another occasion in 2000, Union members stormed Larry Abrams' ("Mr. Abrams") office, which trespass was caught on the Center's surveillance cameras. (Tr. 132-33). In 2006, the Center discharged three employees for intimidating threats made toward non-striking employees. (Tr. 140-41). Also in 2006, the Center's former affiliate, Resort, charged 1199 with unlawful picketing outside the facility because it failed to give the proper § 8(g) notice to the facility. (Tr. 137).

⁴ The Center believes the picket's purpose was to pressure the Center to agree to a new collective bargaining agreement on the Union's terms.

⁵ Ms. Sieger testified to her knowledge of the Union's disruptive tactics at Staten Island University Hospital. (Tr. 148). In that case, the Board found, in part, that "Hospital employees, who were fully aware of [the Union official's] actions, would reasonably tend to fear that they would be subjected to the same abusive tactics if they failed fully to support . . . the impending strike." *See Staten Island Univ. Hosp.*, 339 NLRB 1059 (2003). In that case, an 1199 official ventured into patient care areas of the hospital and began shouting at the security guard (among other outbursts), "I'm not listening to you. I don't care what you're saying. You touch me and I'll kick all your asses," which the Board found to have the effect of intimidating employees.

96). *It is undisputed that no disciplinary action ever has been taken against any employee for participating in any picket.* (Tr. 80-81, 95-96, 149).

On April 27 and May 1, 2006, through its § 8(g) notices, the Union informed the Center of its intention to strike between May 15 and May 19, 2006. (GC Ex. 7-8). Of the Center's 300 employees, more than 250 are members of the Union, so the Center negotiated in good faith with three temporary agencies – Town, Big Apple and Juno – to find any option to provide emergency coverage for its residents in the event of a strike. (Tr. 152). The Center's operator, Helen Sieger ("Ms. Sieger"), explained to Solomon Rutenberg ("Mr. Rutenberg") that the best deal she could negotiate with any agency for such a large group of agency replacements would require a three-week employment contract. (Tr. 152-53). At a meeting prior to the anticipated strike, Mr. Rutenberg informed employees that, if they chose to strike, the Center *may* have to delay reinstatement for three weeks to allow temporary replacement employees to cover their positions because the temporary agencies would not supply replacements for a shorter period of time. (Tr. 81, 92). The Union requested that the Center put Mr. Rutenberg's statements into writing, and such a letter was distributed to employees. (Tr. 81, 93).

Shortly before the May 2006 strike was scheduled to begin, the Union called the strike off. (Tr. 39, 75). The Union then filed two Section 8(a)(1) charges under the National Labor Relations Act (the "Act") against the Center: the first charge was filed on May 12, 2006 for the Center's videotaping of the picket, and the second charge was filed on September 25, 2006 for Mr. Rutenberg's statement at the employee meeting regarding the delay in reinstatement. A complaint consolidating these two charges was issued by Region 2 on November 30, 2006 (the "Complaint"). (GC Ex. 1). At the hearing on February 22, 2007, Counsel for the General

Counsel sought to amend the Complaint to add an independent Section 8(a)(1) charge based on the letter that was distributed to employees regarding the delayed reinstatement. (Tr. 102-07).

On July 9, 2007, ALJ Landow found that the Center violated Section 8(a)(1) by videotaping employees who participated in the March 2006 picket. (Decision 14, lines 32-36). ALJ Landow also found that the Center violated Section 8(a)(1) when Mr. Rutenberg told employees that they may be delayed reinstatement for three weeks if they chose to strike in May 2006. (Decision 20, lines 6-7). However, ALJ Landow did not find that the Center violated Section 8(a)(1) when it distributed the letter to employees explaining the lockout.⁶ (Decision 20, lines 12-14).

Additional facts appear in the argument.

IV.

ARGUMENT

A. ALJ LANDOW IMPROPERLY DISCREDITED MS. SIEGER'S UNDISPUTED TESTIMONY.

Here, it is a key *undisputed* fact that Ms. Sieger undertook negotiations with at least three temporary agencies to try and find 250+ replacement workers for striking employees on short notice. (Tr. 152). As Ms. Sieger testified without contradiction, the temporary agencies initially demanded a five-week commitment, and Ms. Sieger was able to bring the temporary agency requirements down to a three week commitment in exchange for absorbing orientation costs. (Tr. 152-53). ALJ Landow wrongfully discredited Ms. Sieger's uncontradicted and fully supported testimony because, ALJ Landow characterized Ms. Sieger's testimony as "non-specific" and "conclusory," without even addressing most of Ms. Sieger's lengthy and detailed

⁶ Despite the Center's objection to the Counsel for General Counsel's amendment for an independent Section 8(a)(1) allegation based on the letter, the Center takes no exception to the ALJ's finding on this issue.

testimony. (Decision 9, line 39). The fact is, Ms. Sieger's testimony was not only detailed and supported, but it made common sense.⁷

It is the Board's policy, as enunciated in Standard Dry Wall Prods., 91 NLRB 544 (1950), enf'd, 188 F.2d 362 (3d Cir. 1951), to attach great weight to a judge's credibility findings insofar as they are based on demeanor. However, to the extent that credibility findings are based upon factors other than demeanor, the Board itself may proceed with an independent evaluation. Starcraft Aerospace, Inc., 346 NLRB no. 104 at 17-21 (2006); Canteen Corp., 202 NLRB 767, 769 (1973) (citing Valley Steel Prods. Co., 111 NLRB 1338 (1955)). Here, ALJ Landow does not address the fact that Ms. Sieger's testimony was wholly undisputed and un rebutted by Counsel for the General Counsel and Counsel for the Charging Party. Instead, ALJ Landow merely attacked Ms. Sieger's testimony without even addressing significant portions of the record. (Decision 9-10). ALJ Landow did not consider that Counsel for the General Counsel or the Charging Party could have subpoenaed representatives of the temporary agencies to contradict Ms. Sieger's testimony, but they chose not to do so. As such, ALJ Landow's credibility findings as to Ms. Sieger must be disregarded.

Specifically, Ms. Sieger testified that for the Center to obtain such a large number of replacement workers for a short strike, she had to agree to a three-week commitment. (Tr. 152-53). Neither Counsel for the General Counsel nor Counsel for the Charging Party ever introduced testimony or other evidence that Ms. Sieger's contract terms with the agency were inappropriate or incredible. Clearly, then, because the Center's decisions were purely based on

⁷ The Center admits that Ms. Sieger's testimony was "self-serving." If this was a basis for discrediting witnesses, no party witness would ever be credited.

the availability of 250-plus temporary workers, and neither opposing party presented any contrary evidence, Ms. Sieger's uncontradicted testimony must be credited.⁸

B. THE CENTER DEMONSTRATED ITS REASONABLE BASIS FOR VIDEOTAPING THE MARCH 2006 PICKET

As acknowledged by ALJ Landow, an employer may engage in surveillance of its employees participating in protected activity if the employer can present a "solid justification" or "legitimate business reason" for its surveillance. Nat'l Steel & Shipbuilding Co., 324 NLRB 499 (1997), enfd., 156 F.3d 1268 (3d Cir. 1998). The Center asserts that its responsibility to care for vulnerable residents in a healthcare institution requires it to take every reasonable measure to protect its residents from any actual or threatened harm. (Tr. 122). Given the vast amount of evidence presented at the Hearing regarding the Center's specific prior experiences with the Union's misconduct and the impact that misconduct has already had on the Center's residents (Tr. 123-24, 131-33, 140-41), ALJ Landow's conclusion that the Center did not have a reasonable basis to videotape Union pickets on or near the Center's premises was wholly misguided.

1. The Center Presented Sufficient Evidence of Union Misconduct to Justify Surveillance.

a. The Center presented sufficient evidence of the Union's prior misconduct.

In her Decision, ALJ Landow again discredits the testimony of the Center's Operator, Ms. Sieger, regarding the Center's past experiences of Union misconduct. (Decision 10, lines 2-33). The fact remains that Ms. Sieger's testimony was un rebutted by both Counsel for the General Counsel and Counsel for the Charging Party, so that ALJ Landow's credibility determination is undermined. In fact, few, if any, facts are disputed by the Parties in this case. However, ALJ

⁸ We note that there was no rebuttal testimony from the Counsel for the General Counsel or Counsel for the Union as to what kind of arrangements Ms. Sieger could have made to accommodate the large number of employees who had to be replaced.

Landow discredited Ms. Sieger's testimony based on the facts that (a) she was not an eyewitness to the incidents of Union misconduct in 2000 and, (b) in any case, events that took place in 2000 were too remote in time to justify the Center's surveillance of Union picketing in 2006. (Decision 10, lines 6-39). Both of ALJ Landow's assumptions are improper.

Contrary to ALJ Landow's finding that the newspaper article introduced as Resp. Ex. 2 does not implicate the Union, the article specifically states that, "On the night of The News' visit, workers voted in favor of a protest, turning a first-floor lunchroom into a raucous union hall filled with workers decked out in white nurses' uniforms." (Resp. Ex. 2 at 5). Thus, the article does implicate union involvement in orchestrating the trespass into the facility. (*Id.*). Although Ms. Sieger testified that she did not witness the actual events of the Daily News Break-In (Tr. 125), the fact remains that Ms. Sieger, as the Center's Operator, was responsible for the aftermath of the incident – *i.e.*, following up with the press that reported on the incident and arranging for therapy and trauma counseling for those residents who were frightened by the commotion. (Tr. 149).

ALJ Landow assumed that just because Ms. Sieger was not an eyewitness to the trespass that the Center did not show sufficient evidence that the event actually happened; such a conclusion is illogical given the evidence in the record, which includes Ms. Sieger's testimony regarding her responsibility to arrange therapy for residents and press response with respect to the incident. (Tr. 149). Ms. Sieger's testimony regarding her arrangement of therapy combined with the newspaper article's reference to the Union's participation in the incident was sufficient evidence to show that the Union's coordinated trespass threatened residents' safety. (Resp. Ex. 2). Thus, ALJ Landow's determination that there was insufficient evidence to prove that the Union orchestrated the trespass was unwarranted.

With respect to the incident wherein Union delegates stormed Mr. Abrams' office, sat on his desk and threw things off of it, Ms. Sieger testified that although she was not present, she saw the event on the surveillance camera in the facility. (Tr. 132-33). Again, just because Ms. Sieger was not an eyewitness to the event, ALJ Landow cannot assume that Ms. Sieger has no personal knowledge of the event since Ms. Sieger testified that she saw the surveillance tape of the event itself. (*Id.*).

b. As a healthcare facility, the Center demonstrated surveillance was necessary out of a legitimate concern for resident safety.

Next, ALJ Landow reasons in the Decision at pages 10-11 that because these events occurred six years prior to the Center's surveillance in March 2006, the Center's surveillance was unjustified. (Decision 10, lines 36-39, Decision 11, lines 7-10). This reasoning simply cannot be adopted by the Board. In Smithfield Foods, Inc., 347 NLRB No. 109 (2006), cited by ALJ Landow in her Decision at 10, the Board refused to adopt the ALJ's finding of unlawful surveillance by an employer that manufactured and sold pork products. In doing so, the Board observed:

As the videotaping was precipitated by the Union's [prior] trespass, *its timing does not support a violation* As the Union never offered assurances that it would not trespass again, the Respondent was not obligated to halt its videotaping and wait to see if the Union resumed its trespass.

347 NLRB at *15 (emphasis added). If the Board has found that a pork manufacturer was not required to halt videotaping because it anticipated union trespass based on a prior incident of union trespass, it must follow that the Center, which is a *healthcare facility* caring for residents, should also be allowed to monitor the Union's activity based on prior evidence of trespass. Thus, given the Board's decision in Smithfield Foods, ALJ Landow's argument that the six-year span of time between the trespass and the March 2006 surveillance is wrong where the Union's own

misconduct precipitated the surveillance. (Decision 10, lines 37-38). Moreover, while six years may be more remote than the eight-month span in Trailmobile Trailer, LLC, 343 NLRB 95 (2004), also cited by ALJ Landow in her Decision, the Board should seriously consider the policy implications of requiring a healthcare institution that must care for elderly residents to just stand by and wait for the Union's predatory tactics to threaten resident care. Indeed, even the Supreme Court of the United States has recognized that healthcare facilities are unique and should be assessed differently than factories or warehouses:

"Hospitals, after all, are not factories or mines or assembly plants. They are hospitals, where human ailments are treated, where patients and relatives alike often are under emotional strain and worry, where pleasing and comforting patients are principal facets of the day's activity, and where the patient and his family – irrespective of whether that patient and that family are labor or management oriented – need a restful, uncluttered, relaxing, and helpful atmosphere, rather than one remindful of the tensions of the marketplace in addition to the tensions of the sick bed."

Beth Israel Hosp. v. NLRB, 437 U.S. 483, 509 (1978)(Blackmun, J., concurring). Unlike Trailmobile and Smithfield Foods, which dealt with factory and manufacturing settings respectively, a healthcare facility cannot afford the risk of another break-in that would threaten resident safety. ALJ Landow's focus on the timing of these events in relation to the March 2006 surveillance was simply inapposite given the healthcare context.

c. Contrary to ALJ Landow's statement, the Board does not require a showing of police presence to find that an employer's safety concerns are legitimate for purposes of surveillance.

Further, ALJ Landow's assessment that the Center did not demonstrate that the events in 2000 were not sufficiently dangerous to resident safety because the police were not summoned to the scene of these events is also inapposite. (Decision 11, lines 7-10). Significantly, the Board decisions cited by ALJ Landow do *not* require that employers supply evidence of police presence to justify their legitimate concerns for safety; those cases just happen to involve situations where

the police were summoned. Thus, an employer need not be required to prove that the police addressed the situation in question because the Board has never required such a showing, and, in any event, the beginning of the surveillance DVD entered into evidence as Respondent's Exhibit 1 shows that the police *were* present at the March 2006 picket. (Resp. Ex. 1).

Notably, other Board decisions that do *not* address police involvement still allow an employer to engage in surveillance when the employer's reasonable basis is justified. See, e.g., Concord Metal, Inc., 295 NLRB 912 (1989)(adopting dismissal of surveillance charge based on employer's "preservation of proof" defense even though no police presence demonstrated); Roadway Express, Inc., 271 NLRB 1238 (1984)(adopting dismissal of surveillance charge because employer gathered evidence of picketing even though no police presence demonstrated). In this case, there is no question that the Center's responsibility to protect residents required it to monitor the Union's protected activity given the Union's unpredictable history of behavior. Thus, ALJ Landow's reasoning that police presence is required to justify a reasonable basis for surveillance should not be adopted by the Board.

**d. Undisputed evidence that Union employees
have never been retaliated against for their protected activity
is relevant to the analysis of the Center's lawful purpose for surveillance.**

Finally, ALJ Landow found irrelevant to her analysis that the undisputed evidence from all of the witnesses at the Hearing demonstrated that no one has ever been retaliated against for participation in protected activity despite the Center's open surveillance. (Decision 14, lines 20-22). In fact, the Board has found that evidence of no retaliation, discipline or discharge for protected activity tends to indicate that surveillance under attack does not restrain employee participation, thereby adding credence to an employer's stated safety concerns. See, e.g., Karatjas Family Lockport Corp., 292 NLRB 953, 956 (1989)(reversing ALJ and dismissing

surveillance charge because no evidence of employee coercion); Roadway Express, 271 NLRB 1238 (adopting dismissal of surveillance charge because ALJ found there was no evidence that employees were coerced as a result of surveillance). Put simply, the undisputed evidence at the Hearing that employees did neither felt restrained nor that anyone knew of any employee who had been restrained from protected activity as a result of the Center's surveillance shows that the Center is truly concerned about resident safety and is not interested in identifying Union members who participate in protected activity for coercive, restraining or retaliatory purposes. Thus, this reasoning should not be given weight.

ALJ Landow's reasoning essentially adopts a per se approach for her Section 8(a)(1) finding based on surveillance. This approach should not be adopted by the Board given the modern realities of surveillance in the workplace. *See infra* at 16. In Rossmore Homes, 269 NLRB 1176 (1984), the Board rejected a "per se" approach to alleged Section 8(a)(1) interrogations of union employees, stating that the overall "context" must be considered in evaluating whether the "interrogation" was really coercive and within employees' Section 7 rights. Given the undisputed fact that here there was a decade-long record of videotaping without even a hint of retaliation, and given the modern realities that videotaping is now absolutely commonplace and routine in American society, the Rossmore rationale must be adopted in this case to find that there has been no violation of Section 8(a)(1).

**2. Evidence Preservation is a Valid
Justification for an Employer's Anticipatory Surveillance.**

The Board has recognized that anticipatory surveillance is lawful provided that the employer demonstrate a need to preserve evidence for future use. "*It does not follow*, however, that the Board requires that 'solid justification' can be established only after specific instances of anticipated problems have occurred." *See Wash. Fruit & Produce Co.*, 343 NLRB 1215, 1218

(2004)(emphasis added). Evidence preservation is a legitimate reason for an employer to undertake anticipatory surveillance. *Id.* The Center introduced evidence at the Hearing that, in addition to monitoring protected activity to ensure resident safety, the Center seeks to satisfy requests from *NLRB Regional Offices* to evaluate picketing cases. (Tr. 137-38). ALJ Landow assumed that evidence preservation would only be a valid defense where the party preserving the evidence actually uses the evidence in a future proceeding. (Decision 12, Lines 31-34). However, Board precedent does not suggest that a party relying on the defense need to actually use the evidence in a future proceeding for the defense to be successful.

For example, in Saia Motor Freight Line, Inc., 333 NLRB 784 (2001), the Board held that an employer's concern for traffic safety due to union conduct warranted surveillance because of "the *potential* for accidents." 333 NLRB at 784 (emphasis added). Thus, it made no difference that the employer never had to use the videotape in a subsequent legal proceeding; rather, the fact that there was a *potential* for an accident was enough to persuade the Board that the employer's concern was legitimate. *Id.* Moreover, the ALJ in that case specifically observed the fact that there had been no evidence in the record that the employer wished to use the photographs to support any complaint or to seek an injunction; however, the ALJ and the Board still found that the employer's evidence preservation defense was legitimate. *Id.* at 793.

In a case involving a fruit packaging employer, the Board found that a fear of recurrence of Union trespassing justified surveillance by the employer for evidence preservation. Wash. Fruit, 343 NLRB at 1217. The Board observed that "[the employer] could easily visualize the consequences of such a . . . gathering, and he could predict that he would have safety, property, and security issues to face." *Id.* In Wash. Fruit, the Board observed that given the "close proximity of the public areas" and "prior incidents of trespassing on the [employer's] property . .

. it was prudent of [the employer] to plan on documenting the Union's rally." 343 NLRB at 1218. As the Board reasoned in that case,

The Board's rules regarding picture-taking of protected activity do not mean that an employer is precluded from asserting a legitimate concern simply because no disruption has yet occurred . . . [otherwise], there would be no reason for the Board to require 'solid justification for . . . *anticipatory* photographing.

Id. (emphasis added). Here, Union picketing takes place across the street from the Center's only entrance and the Center has experienced prior trespassing on its premises by the Union.⁹ Thus, under Wash. Fruit, it was prudent of the Center to engage in surveillance for evidence preservation purposes. Again, in the context of a healthcare facility, it is unfathomable to believe that the Board would find that traffic safety, but not resident safety, was valid for purposes of evidence preservation. If that reasoning were adopted, the Board would essentially be endorsing an approach that would allow healthcare employers to rely on the evidence preservation defense to protect the cars parked on the premises of a healthcare facility, but would not allow a healthcare facility to rely on the same defense to protect patients or residents of that facility. Such a result would be absurd.

In fact, the Center demonstrated that its former affiliate, Resort, that also operated with employees belonging to the Union already has had to submit a surveillance tape to comply with Region 29's request for video evidence in a prior NLRB charge. (Tr. 137-38). Thus, because the Center has already had to use such evidence in the past and may be expected to gather such evidence in the future given its difficult relationship with the Union, it is unfair for the Board to

⁹ In Robert Orr-Sysco Food Servs., 334 NLRB 977 (2001), the Board found an employer's surveillance unlawful because the employer sought to videotape handbilling that was taking place far from the employer's premises on the public highway "two turns away from the Employer's driveway." 334 NLRB at 978. In this case, it is undisputed that the Union picketed across the street from the only entrance of the Center that is located on a very narrow street within close proximity of residents' rooms. (Tr. 147, Resp. Ex. 1). Thus, the physical proximity of the picketing warranted surveillance to protect residents.

take away the Center's right to preserve evidence when there has been no showing of any tendency to restrain protected activity as a result of the surveillance. (Tr. 80-81, 95-96, 149).

3. This Case is Distinguishable From Cases Relied on by ALJ Landow.

ALJ Landow relies on Snap-On Tools, Inc., 342 NLRB 5 (2004), to argue that an employer who cannot sufficiently demonstrate evidence to support its reasonable basis for surveillance cannot overcome a finding of a Section 8(a)(1) violation. (Decision 13, lines 50-52). In that case, the employer claimed that it was concerned about parking lot safety, when in fact, the employer did not introduce *any* evidence of prior incidents of trespass or violence to justify the employer's safety concern. *Id.* at 12. In this case, the Center introduced evidence of two prior incidents of trespass to justify its concern for resident safety.¹⁰

Moreover, in Snap-on Tools, there was actual evidence in the record that "the continuous observation of handbilling *prevented* employees who desired to receive union literature anonymously from doing so." *Id.* (emphasis added). Here, no such evidence of restraint on protected activity was adduced at the Hearing and, in fact, it was undisputed that no employee has ever suffered retaliation as a result of the Center's long history of open surveillance. (Tr. 80-81, 95-96, 149).

In the Decision at page 13, ALJ Landow also relies on Trailmobile, 343 NLRB 95, where the Board found that an employer's concern for vandalism did not justify the employer's surveillance because the employer installed the surveillance cameras eight months after an incident of vandalism occurred; thus, the Board found that given the eight-month time span, the employer's reasoning was a pretext for unlawful surveillance because if that employer was

¹⁰ALJ Landow also relied on Center Constr. Co., Inc., 345 NLRB No. 45 (2005), a case in which the Board adopted the ALJ's finding that an employer engaged in unlawful surveillance because it failed to produce any evidence that it reasonably anticipated any misconduct on the picket line. Again, in this case, the Center provided ample evidence of prior incidents of Union misconduct to justify its anticipatory surveillance.

legitimately concerned about parking lot safety, it would have installed the cameras sooner. 343 NLRB at 96. Here, Ms. Sieger testified the Center has had surveillance cameras around the premises for many years and that the Center has been videotaping Union picketing for many years to preserve evidence in case any residents are harmed in the course of Union activity. (Tr. 122). Thus, the Board cannot find any pretext because the Center has always been concerned for resident safety given its long history of surveillance that pre-dated the incidents of trespass in 2000. (*Id.*). Further, there was evidence that the employer in Trailmobile took adverse actions against employees who participated in the union activity caught on tape, 343 NLRB at 96, whereas it is undisputed in this case that the Center has never taken any action against any employee who participated in protected activity. (Tr. 80-81, 95-96, 149).

In the instant case, not only did the Center present evidence of prior trespass and aggression, but the Center also cross-examined several Union members who all consistently testified that no one felt restrained from participating in protected activity despite knowledge of the Center's surveillance. (Tr. 80-81, 95-96, 149). Thus, unlike Snap-On Tools and Trailmobile, the Center presented sufficient evidence to justify its legitimate concerns for resident safety, warranting dismissal of the Section 8(a)(1) finding.

3. Policy Dictates a Shift in the Board's Surveillance Doctrine.

Finally, as described *supra* at 12, the Center requests that the Board reconsider the scope of its surveillance doctrine given the fact that both employers and labor organizations in the twenty-first century are living in a technologically-advanced reality far removed from the concerns of the creators of the Act. Both employees and employers have access to the internet and various surveillance techniques. Moreover, employees generally consent to information technology privacy practices upon initiation of employment, which practices may include

surveillance cameras on the premises and surveillance of computer hardware and internet activity, so surveillance no longer has the restraining impact that it once did because employees have a lessened expectation of privacy in the modern workplace. Further, the advent of the internet has increased the amount of information available to both parties in labor disputes, eliminating any concern for an imbalance of bargaining power. Thus, surveillance does not tend to restrain or coerce employees in the same way that it once did at the time when the Act was created and should not be analyzed in the same rigid manner the Board has ascribed to it in the past.

B. THE CENTER DID NOT MISLEAD EMPLOYEES ABOUT THEIR REINSTATEMENT RIGHTS.

ALJ Landow found that the Center violated Section 8(a)(1) by telling employees that they would be delayed reinstatement for three weeks if they participated in the May 2006 strike¹¹ due to the minimum three-week commitment of the temporary replacement worker contract, because no written contract had been introduced into evidence at the Hearing. (Decision 20, lines 6-7). In fact, Ms. Sieger testified that no written contract had been entered into.¹² (Tr. 151-53). It was improper of ALJ Landow to assume that just because there had been no written contract in place at the time of Mr. Rutenberg's statement, the Center misled employees about the consequences of the temporary employment contract on their reinstatement. Further, even if no contract existed, the Board must still find for the Center because it lawfully advised employees of the employer's rights in the context of a pending economic strike.

¹¹ For purposes of her Decision, ALJ Landow assumed that although no strike actually occurred, the nature of the strike in this case would have been an economic strike because Counsel for the General Counsel failed to prove any unfair labor practices that were the root of the strike at the Hearing. In the context of an economic strike, the Center would lawfully have the right to replace striking employees with replacements. Moreover, the employer must inform employees at the time of or prior to the time that the replacement employees have been hired of the striking employees reinstatement rights, if any.

¹² This makes sense because the strike was called off before there was a need for a formal written contract.

1. The Record Indicates That a Verbal Contract Existed, so The Center Never Misled Employees About The Status of The Contract.

At the Hearing, Ms. Sieger testified that she had been in contact with three temporary employment agencies to find replacements for the employees who had threatened to strike in May 2006. (Tr. 152-53). As a healthcare facility, the Center had an obligation to arrange for replacements who could provide continuous resident care in the event of a strike. Ms. Sieger agreed with the temporary employment agencies to drop their minimum commitment from five weeks to three weeks in exchange for the Center's promise to absorb orientation costs. (Tr. 153). Ms. Sieger instructed Mr. Rutenberg to inform the employees of the impact of this contract on the employees' reinstatement rights. (*Id.*). Accordingly, Mr. Rutenberg, told employees that if they struck they would be replaced for three weeks pursuant to the contractual requirement with the temporary agencies. (Tr. 81, 92). ALJ Landow found that because the Center did not produce a written contract with a temporary employment agency, that such an agreement never existed. (Decision 19, lines 14-17). The Center excepts to ALJ Landow's reasoning.

ALJ Landow relies on Noel Foods Div., 315 NLRB 905 (1994), wherein the Board found a Section 8(a)(1) violation because the employer had told the employees they would be replaced if they went on strike even though it had not yet finalized any contract for replacement workers. (Decision 20, lines 6-7). In this case, the Center already had a verbal agreement with the temporary agency at the time Mr. Rutenberg made his statement to the employees (Tr. 152-53); thus, Mr. Rutenberg did not make any misleading statement that would tend to reasonably interfere with the employees' strike. The employees even testified that Mr. Rutenberg explained that the temporary agency contract would be the reason for the delayed reinstatement. (Tr. 81, 92). Further, with respect to Ms. Sieger's discussions with various temporary agencies, Ms. Sieger testified: "I was happy that some people *took on the project* to be able to help for

whatever percentage of staff that they can." (Tr. 152)(emphasis added). Ms. Sieger's testimony that an agency "took on the project" shows that a verbal agreement in fact existed to provide replacements in the event of a strike.

The fact is that Ms. Sieger, who made the phone calls and engaged in negotiations with the temporary agencies, testified that the contract had been verbally entered into with the temporary agency. (Tr. 152-53). Thus, when Mr. Rutenberg informed employees of the situation, he presented an accurate picture of the employees' reinstatement prospects. (Tr. 81, 92). It was improper for ALJ Landow to find a Section 8(a)(1) violation based on these facts in the record, and such a finding should not be adopted by the Board. (Decision 20, lines 6-7). Again, we note that the Counsel for the General Counsel and the Charging Party could have subpoenaed the employment agencies at issue to present contrary evidence regarding the verbal contract's existence but chose not to do so.

**2. Regardless of The Contract's Existence,
Mr. Rutenberg's Statement Was Lawful Because
it Was Not Coupled With Any Other Threats or Permanent Job Loss.**

Regardless of whether the Board adopts ALJ Landow's factual finding regarding the status of the temporary agency contract, the Board must find that Mr. Rutenberg's statement did not constitute a Section 8(a)(1) violation because it did not threaten any permanent job loss and because it was not coupled with any threats of reprisal. Mr. Rutenberg's statement in this case is similar to the statement made by the employer in Eagle Comtronics, Inc., 263 NLRB 515 (1982), which statement was deemed lawful by the Board. The employer in that case told employees who were going on strike that in an economic strike context, the strikers "could be replaced with applications [on] file." 263 NLRB at 515. In finding that the employer's statement did not violate Section 8(a)(1), the Board explained:

[A]n employer may address the subject of striker replacement without fully detailing the protections enumerated in Laidlaw, so long as it does not threaten that, as a result of a strike, employees will be deprived of their rights in a manner inconsistent with those detailed in Laidlaw As long as an employer's statements on job status after a strike are consistent with the law, they cannot be characterized as restraining or coercing employees in the exercise of their rights under the Act.

263 NLRB at 516. The Board reversed the ALJ's finding of a Section 8(a)(1) violation, holding that the employer merely told employees that they *could* be replaced by applicants on file, which "does not contravene any Laidlaw rights, but, indeed, is entirely consistent with the law." 263 NLRB at 515. Similarly, Mr. Rutenberg explained that striking employees may be out of work for three weeks pursuant to the temporary agency contract. (Tr. 81, 92). Because in the context of an economic strike Mr. Rutenberg was entitled to make such a simple statement to the employees of the Center's replacement rights, his statement cannot possibly be construed as a Section 8(a)(1) violation. See Eagle Comtronics, 263 NLRB at 516.

a. Recent Board decisions require dismissal of the Section 8(a)(1) allegation.

Indeed, the Board recently examined a nursing home employer's statement in River's Bend Health & Rehab. Serv., 350 NLRB No. 16 (June 29, 2007), a case decided just over one week prior to ALJ Landow's Decision in the instant case. In that case, the employer distributed a letter to employees who were planning on striking a nursing home that stated, in part: "In a strike the Company would be forced to hire replacements to be sure we can take care of the residents. This puts each striker's continued job status in jeopardy." 350 NLRB No. 16, at *4-5. The Board held that the statement did not violate Section 8(a)(1) because the employer "did *not* say that replaced strikers would permanently lose their jobs." Id. The Board reasoned that the employer's statement was lawful and fully consistent with Laidlaw precisely because, in the economic strike context, the employer has the right to replace employees with temporary

workers, and those employees may not be immediately reinstated at the end of the strike, which "in a very real sense" would "place strikers' job status in jeopardy"" 350 NLRB No. 16, at *8. Moreover, the statement was not accompanied by any threats, so "any ambiguity in [the statement] must be construed in the [employer's] favor." Id.

The nursing home employer's statement in River's Bend Health & Rehab. Serv. is wholly duplicative of the statement made by Mr. Rutenberg in this case; thus, the Board must apply the same analysis here as it did in that case and dismiss the Section 8(a)(1) finding. First, Mr. Rutenberg did not ever permanently threaten job loss – the testimony of union employees who attended the meeting specifically indicated that the employees understood that they may be delayed reinstatement for three weeks due to the temporary agency contract. (Tr. 81, 92). There is simply no evidence in the record that any employee thought permanent job loss was an issue to be concerned about.

Next, Mr. Rutenberg's statement was entirely consistent with Laidlaw, 171 NLRB 1366 (1968). Even if there were any doubt that the statement was an incomplete statement of an employee's Laidlaw rights, the Board has specifically held that an employer's "incomplete" statement of employee rights does not violate Section 8(a)(1). See Eagle Comtronics, 263 NLRB at 516 (holding employer need not "explicate all the possible consequences of being an economic striker"); see also Quirk Tire, 330 NLRB 917, 926 (2000)("While [employer's] comments may have been legally incomplete, they do not suggest or intimate that any employee rights would be denied as a result of a strike."). Finally, the plethora of evidence in the record dictates that Mr. Rutenberg's statement was not accompanied by any unlawful threat of reprisal against striking employees; thus, his statement "cannot be characterized as restraining or coercing employees." Eagle Comtronics, 263 NLRB at 516.

The Board has also held that an employer's statement in a pamphlet during an economic strike that the employees were "not discharged, technically speaking, [b]ut they're not working" was not unlawful because the statement "sufficiently dispels any impression that employees who engage in an economic strike are absolutely terminated." John W. Galbreath & Co., 288 NLRB 876, 877 (1988). At most, the Board found that the statement would "puzzle" economic strikers about whether or not they would be able to return to work, but because there was no implication that they had been discharged, there was no finding of a Section 8(a)(1) violation. Id. Similarly, Mr. Rutenberg never even spoke in terms of discharge, termination or job loss – he merely spoke about the impact temporary replacement workers would have on *delaying* reinstatement. (Tr. 81, 92). Notably, there was no evidence at the Hearing that any employee felt "puzzled" as to his or her ability to return to work after the temporary worker contract had been satisfied by the Center.

Similarly, in Novi Am., Inc., 309 NLRB 544, 545 (1992), the Board held that an employer's statement that "striking employees can be replaced by permanent replacements" was entirely consistent with the law. The Board also held that the second portion of the employer's statement, that "employees may not have a job when the strike is over," was consistent with the law because the employer was merely informing employees that they may not be able to "*immediately* return" to their jobs at the conclusion of the strike. 309 NLRB at 545. The Board further found that because the statements were not accompanied by any threats, the employees would not be under the impression that, "as a result of a strike, [they] would be deprived of their rights in a manner inconsistent with Laidlaw." Id.; see also Quirk Tire, 330 NLRB at 925-926 (finding no 8(a)(1) violation for statement that employees "could" be permanently replaced in event of strike because statement was not a threat and was not made in context of other threats). Similarly, Mr. Rutenberg's statement was an accurate explanation of an employer's rights in the

context of an economic strike and was not accompanied by any threats; thus, the Section 8(a)(1) finding must be dismissed based on Board precedent.

ALJ Landow cites Sutter Health Ctr., 20-CA-30946-1, 2007 NLRB LEXIS 436, at *4 (Sept. 29, 2006), to support her contention that the Center violated Section 8(a)(1) by telling employees their reinstatement would be delayed by three weeks. (Decision 15, lines 42-43). In that case, the Board held that because of the union's history of *predictable* one-day strike behavior (which always resulted in the union's submission of reinstatement requests with their strike notices), it was unreasonable for the employer to assume that the one-day strike at issue would have been any different to justify the employer's five-day delay in reinstatement. 2007 NLRB LEXIS at *4. Here, 1199 had never given the Center any assurances that it would refrain from engaging in follow-up strikes to disrupt the Center's healthcare operations. (Tr. 154). Accordingly, based on the Union's unpredictable tactics at the Center, and the Union's failure to give any assurance that it would refrain from engaging in further strikes, the Center had legitimate reasons to bring in temporary replacements. See Sociedad Espanola de Auxilio Mutuo y Beneficiencia, 342 NLRB 458 (2004)(holding employer's use of temporary workers for two weeks given employees' threat to hold two short strikes justified).

**b. Cases Cited by Counsel for the General Counsel
Are Inapposite and Do Not Impact The Outcome in This Case.**

ALJ Landow's Decision and Counsel for the General Counsel improperly relied upon Grinnell Fire Prot. Sys. Co., 328 NLRB 585 (1999), wherein the Board adopted the ALJ's recommendation that the employer violated Section 8(a)(1) by informing unfair labor practice ("ULP") strikers prior to a strike that, if they chose to strike, they would be fired and that they would not be hired back after the strike ended. (Decision 16, line 14, GC Post-Hearing Br. 30). It is undeniable that Mr. Rutenberg's statement in this case is patently different from the threat in

Grinnell. As an initial matter, ALJ Landow assumed that 1199's strike would have been an economic strike, not a ULP strike (Decision 18, lines 19-20), so the Center was entitled to inform employees that they would be replaced during their strike. See Eagle Comtronics, 263 NLRB at 516. Also, unlike in this case, the employer in Grinnell blatantly misstated the employees' rights in the ULP strike context, which rights would allow the employees full reinstatement at the conclusion of the strike. Grinnell, 328 NLRB at 599. Here, Mr. Rutenberg truthfully explained that the temporary agency required the striking employees to be out of work for three weeks, which explanation is wholly consistent with the Center's rights in the economic strike context. See Eagle Comtronics, 263 NLRB at 516.

Counsel for the General Counsel also relied on Laidlaw Corp., 171 NLRB 1366 (1968), wherein the employer told employees that if they went on strike "you LOSE FOREVER your right to employment by this company . . . I want to assure you that such is the law." 171 NLRB at 1387. There is simply no similarity in the type of statement made by the employer in Laidlaw and Mr. Rutenberg's statement in this case. Mr. Rutenberg never told employees they would permanently lose their jobs; thus, Laidlaw also does not support ALJ Landow's Section 8(a)(1) finding in this case.

Finally, ALJ Landow's and Counsel for the General Counsel's reliance on both Pennant Foods Co., 347 NLRB No. 41 (June 27, 2006), and Cagle's Inc., 234 NLRB 1148 (1978), are similarly misplaced because both of those cases involve ULP strikes where the employees were advised by the employers in advance that they would be permanently replaced in derogation of their ULP strike rights. On the other hand, Mr. Rutenberg's statements regarding an employer's rights during an economic strike were appropriate in the context of an impending economic strike. Thus, it was improper for ALJ Landow and Counsel for the General Counsel to rely on

any of these ULP cases to support a Section 8(a)(1) finding based on Mr. Rutenberg's statements made in the context of a pending economic strike.

CONCLUSION

For all of the foregoing reasons, the Board should not adopt ALJ Landow's Decision.

Dated: New York, New York
September 5, 2007

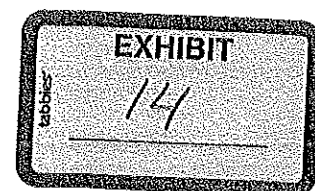
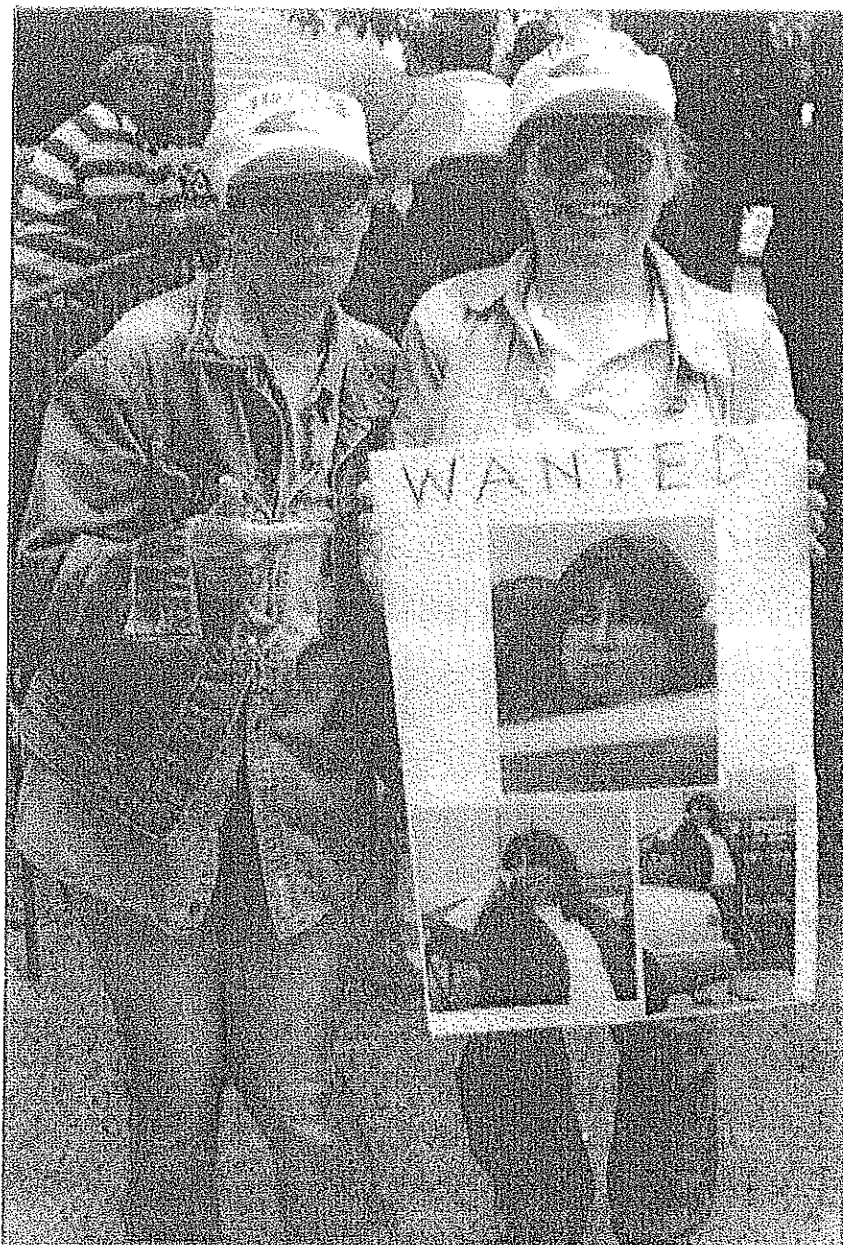
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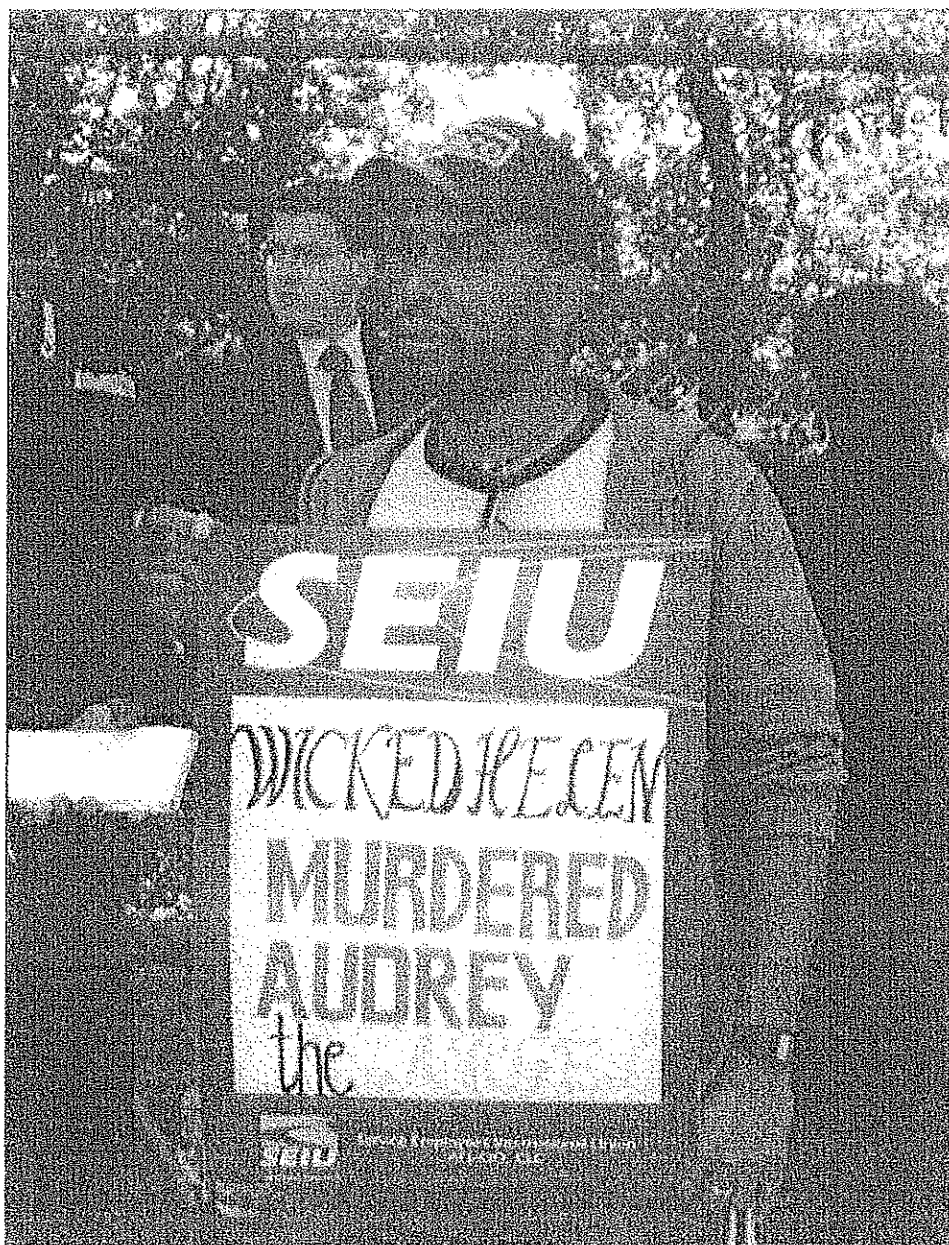
By: _____
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Attorneys for Respondent
Kingsbridge Heights Rehabilitation Care Center

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HELLED

The Dogs is going

to eat you

INFAIR

about

practice

ATTENTION 1199SEIU MEMBERS

1199SEIU
Union of Health Care Workers

A message from the 1199SEIU workers at Kingsbridge Heights Nursing Home.

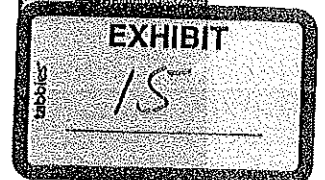
The workers at Kingsbridge Heights Nursing Home in the Bronx have been on strike since February 20th. Management has cut their 1199 health benefits. Management is trying to throw out the union.

These people are believed to be strike breakers and are crossing the picket line.

They hope to take our jobs.

PLEASE HELP US AND OUR FAMILIES.

IF CAN YOU IDENTIFY ANY OF THESE PEOPLE



3400-26 Cannon Place
Bronx, New York 10463
Tel: 718-796-8100
Fax: 718-796-8182

**Kingsbridge Heights
Rehabilitation Care
Center**

Memo

To: All Employees
From: Administration
Date: 1/29/2008

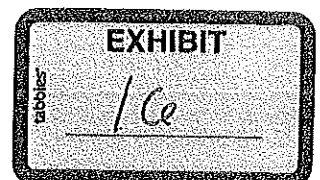
The facility would like to inform ALL employees that Kingsbridge Heights Rehabilitation Care Center respects the Union Members right to strike.

I assure you that this right will come with **NO** retribution of any kind.

For the safety and well being of our residents we do **legally** have the right to know who will be going out on strike and who will continue to work.

We expect **ALL** employees to cooperate fully to ensure the residents we care for are not affected by the strike.

Thank you for your cooperation.



3400-26 Cannon Place
Bronx, New York 10463
Tel: 718-796-8100
Fax: 718-796-8182

**Kingsbridge Heights
Rehabilitation Care
Center**

Memo

To: Wojciech Orlos and All Kingsbridge Heights Employees
From: Helen Sieger
Date: 6/17/2008

As per the Memo posted on January 29, 2008, I will again reiterate that Kingsbridge Heights Rehabilitation Care Center respects the right of all Union Members to strike.

There has not been and will never be any retribution of any kind for participation in the strike.

3400-26 Cannon Place
Bronx, New York 10463
Tel: 718-796-8100
Fax: 718-796-8182

**Kingsbridge Heights
Rehabilitation Care
Center**

Memo

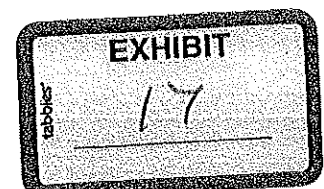
To: All Employees

From: Administration 

Date: 3/31/2008

As a valued employee, you have numerous rights under Federal and State laws. This Administration would never think of or try to take away any of those rights from you. We recognize and readily admit that, as an employee of our facility, the law gives you the absolute right to form or join, any labor organization as permitted by law. We will never take those rights away from you and we will never discriminate or retaliate against, or otherwise interfere with, your right to join or refrain from joining a union.

Any statement in your employment agreement where you affirmed that "you are not a member of any union and will not join (a union)" was a mistake on the part of the Administration and we were wrong. This statement will never be used for any purpose and is withdrawn. Thank you and we sincerely appreciate your association with our organization and the important work you provide to the residents in our Facility.



Family Voices

News For And About Kingsbridge Heights Nursing Home
Resident Families

Issue Number 2 February 19, 2008

1199SEIU
United Healthcare Workers East

For more info: (212) 261-2416



We are being forced to strike today by Kingsbridge Heights owner, Helen Sieger. It's not what we want to do. We love our jobs and we love our residents. But your loved ones are not getting the best care possible when we suffer hardship because we cannot even take care of our own families.

We have not had a contract in many years, because Ms. Sieger will not negotiate with us. In late 2007, around the holidays, *she took away our health benefits—leaving our families, our children and us without health care.* She is blatantly disregarding the law when she refuses to bargain with us.

By law, we informed Ms. Sieger of the possibility of a strike well in advance. Still, she refused to negotiate. We did everything possible to avert a strike; including leafleting, public education campaigns, contacting our elected officials and agreeing to meet with a mediator (she and/or her lawyers just didn't show up). A strike is the final legal action we can take, because she has refused all other options.

Our voices fell on the deaf ears of Helen Sieger who cares more about making a lot of money (she owns one of the most profitable nursing homes in the state) than she does about the residents and employees at Kingsbridge. We simply want to improve our lives and make Kingsbridge better for the residents and all of our families.

We want to work closely with you, resident family members and friends. We are aware that any change in regular

caregivers can be a hardship on your family member. That's why it is critical that we keep each other informed everyday.

You have all been supportive and wonderful. Your calls to the Department of Health have helped. They have already come to the facility to assess the situation and will continue to do that. It is possible that Ms. Sieger will hire unqualified workers while we are on strike, so you must continue to call everyday.

New York State Health Department
Nursing Home Patient Care Complaints
1-888-201-4563

Rema Smith, Ombudsperson
Kingsbridge Heights
212-962-2720

We hope you understand that *Helen Sieger is forcing us to strike* and we will stand by this decision until she does the right thing. We love our jobs, but we cannot take care of our residents, if we cannot take care of our own families and ourselves. A nursing home worker should not have to choose between buying groceries and getting medicine for our kids or ourselves. We need health benefits because a healthy, stable workforce is what our residents deserve. The last thing we want to do is jeopardize the health of the residents we love. That's why we need your help and support!

Questions & Answers

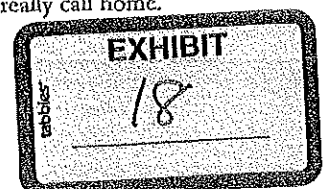
Q: I want to take my loved one out of the nursing home, but Helen Sieger is saying that I can't do that. Is that true? What can I do?

A: First of all, it is not true. You are ultimately responsible for your loved one. If you feel that the care at the nursing home may jeopardize your loved one, there are many excellent nursing homes, right in the area and staffed by 1199SEIU members. In fact, the employers at these nursing homes work well with our union and understand that there is a direct connection to quality care and a healthy stable workforce.

Here are a few:

- SCHERVIER NURSING CARE
2975 INDEPENDENCE AVE
BRONX, NY 10463
(718) 548-1700
- RIVERDALE NURSING HOME
641 WEST 230TH ST
BRONX, NY 10463
(718) 796-4800
- MANHATTANVILLE HEALTH
311 W 231ST STREET
BRONX, NY 10463
(718) 601-8400

If you have any questions at all, please visit us on the picket line or call (212) 261-2416. With your help, we will make Kingsbridge Heights a place your loved ones can really call home.



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Division Director

1199SEIU

United Healthcare Workers East

March 5, 2008

Stallion Group
1783 45th Street
Brooklyn, NY 11204

Re: Kingsbridge Heights Rehabilitation and Care Center

Dear Sir/Madam:

On February 20th, Kingsbridge Rehabilitation and Care Center, Inc. ("Kingsbridge") forced their health care employees, represented by 1199SEIU United Healthcare workers East ("1199"), to commence an unfair labor practice strike by refusing to bargain a new contract and causing the termination of health insurance coverage for its employees and their families.

Since then we have learned that your firm has chosen to ally itself with Kingsbridge by providing a substantial complement of agency employees to fill-in for the jobs previously performed by our striking unit members. By so allying, your firm has shed any neutral standing in the unfair labor practice dispute, and has made common cause with Kingsbridge in its continuing unfair labor practices.

We call upon your firm to cease providing fill-in employees to Kingsbridge during the unfair labor practice strike.

Unless your alliance with Kingsbridge ends by Monday, March 10, 2008, 1199 intends to:

- picket your office(s);
- picket the homes of its principals;
- ask 1199 members and other healthcare employees who work through your agency to cease working through your agency;
- advertise in appropriate media targeting the per diem nurse population;
- engage in other lawful, concerted economic activities, including but not limited to notifying the hospitals and nursing homes in New York City that they should not do business with your firm while it allies itself with Kingsbridge in the unfair labor practice strike.

NEW YORK CITY
PRINCIPAL
HEADQUARTERS
310 West 43rd Street
New York, NY 10036
(212) 582-1800
www.1199seiu.org

ALBANY
155 Washington Ave.
Albany, NY 12210
(518) 396-2300

KINGSTON
75 Crown Street
Kingston, NY 12401
(845) 339-1900

BALTIMORE
611 North Eutam Street
Baltimore, MD 21201
(410) 332-1199

ROCHESTER
225 W. Broad St., Ste. 8
Rochester, NY 14608
(585) 244-0820

BOSTON
21 Fellows Street
Roxbury, MA 02119
(617) 442-4100

SYRACUSE
404 Oak St., Suite 120
Syracuse, NY 13217
(315) 424-1743

BUFFALO
974 Kenmore Ave
Buffalo, NY 14216
(716) 982-0540

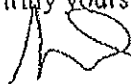
UNIONDALE
50 Charles Lindbergh, Ste. 6
Uniondale, NY 11553
(516) 542-1115

EXHIBIT

19

Please advise us if you will stop supplying strikebreakers to Kingsbridge. Unless we hear from you by March 10, 2008 at noon, we will assume that you are continuing to supply workers to perform struck work at Kingsbridge, and will take all lawful and appropriate steps to protect the interests of this union and its members striking at Kingsbridge.

Very truly yours,



Mike Rifkin
Executive Vice President, 1199SEIU

cc: Kingsbridge Nursing Home 1199 Committee

04/07/2008 12:52 FAX

001/001

WANTED

Do you or someone you know do
business with this company?

Upstate Dairy/ Golden Flow

54 Walworth St.
Brooklyn, 11205

(718) 488-0700

Call the
1199SEIU
Strike Breaker
Hot Line at
(212)
261-2332

1199SEIU
United Healthcare Workers East

This company is believed to be a strike breaker at Kingsbridge Heights Nursing Home in the Bronx!

Background: 1199SEIU workers at Kingsbridge Heights Nursing Home in the Bronx have been on strike since February 20th. The boss, Helen Sieger, cut off our health benefits and is trying to throw out our union.

All of us walked out together. We have been standing strong together. We have the support of our community and all of our elected officials. But, shamefully there are still some companies that are crossing our picket line. We need *your* help! Help us identify these strike breakers Tell them SHAME ON YOU! Tell the workers at these companies that the next time there is a strike, it could be them without health insurance and carrying a picket sign!

AN INJURY TO ONE IS AN INJURY TO ALL
OF US. TELL THEM NOT TO CROSS OUR
PICKET LINE.